FEDERAL REGISTER

Vol. 82 Wednesday,

No. 30 February 15, 2017

Pages 10701–10854

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1327; Directorate Identifier 2012–NE–47–AD; Amendment 39–18793; AD 2017–03–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2014–16–10 for all Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines. AD 2014–16–10 required initial and repetitive ultrasonic inspections (UIs) of the affected low-pressure (LP) compressor blades. This AD requires the UIs in AD 2014–16–10 while reducing the inspection threshold. This AD was prompted by revised service information to reduce the inspection threshold for UI of the LP compressor blades. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective March 22, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 22, 2017.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418, or email: *http://www.rolls-royce.com/contact/civil_team.jsp.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–1327.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–1327; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2014–16–10, Amendment 39–17934 (79 FR 48961, August 19, 2014), (''AD 2014–16–10''). AD 2014–16–10 applied to RR RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines. The NPRM published in the **Federal Register** on November 1, 2016 (81 FR 75762). The NPRM proposed to continue to require the UIs in AD 2014–16–10 while applying the revised inspection threshold.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change the Costs of Compliance

RR noted the 40 hours in the Costs of Compliance to undertake the inspection in RR Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AH465, Revision 2, dated May 11, 2016, exceeds the RR guidance provided in the NMSB. The NMSB states that the on-wing inspection takes 16 hours to accomplish if the blades are installed, and total time of 28 hours if the blades are removed.

We disagree. The Costs of Compliance estimate assumed the blades would be removed for inspection, which includes the time required to remove the blades and reinstall them afterward to return the engine to service. We did not change this AD.

Request To Add Credit for Previous Actions

RR requested that previous inspection in accordance with RR Alert NMSB RB.211–72–AH465, Revision 1, dated July 10, 2015, or earlier revisions, be considered as credit for previous action, against the inspection requirements of this AD to align with European Aviation Safety Agency, (EASA) AD 2016–0141, dated July 18, 2016 (corrected July 20, 2016).

We agree. The inspections done using RR Alert NMSB RB.211–72–AH465, Revision 1, dated July 10, 2015, or the initial issue, dated July 15, 2013, are acceptable. We added RR Alert NMSB RB.211–72–AH465, Revision 1, dated July 10, 2015, and the initial issue, dated July 15, 2013, to paragraph (f) of this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information Under 1 CFR Part 51

RR has issued Alert NMSB RB.211–72–AH465, Revision 2, dated May 11, 2016. The NMSB describes procedures for performing a UI of the LP compressor blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 56 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	40 work-hours × $85 per hour = $3,400	$0	$3,400	$190,400

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2014–16–10, Amendment 39–17934 (79 FR 48961, August 19, 2014), and adding the following new AD:

2017–03–02 Rolls-Royce plc: Amendment 39–18793; Docket No. FAA–2012–1327; Directorate Identifier 2012–NE–47–AD.

(a) Effective Date

This AD is effective March 22, 2017.

(b) Affected ADs

This AD supersedes AD 2014–16–10, Amendment 39–17934 (79 FR 48961, August 19, 2014).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines, with low-pressure (LP) compressor blade, part number (P/N) FK23411, FK25441, FK25968, FW11901, FW15393, FW23643, FW23741, FW23744, KH23403, or KH23404, installed.

(d) Unsafe Condition

This AD was prompted by LP compressor blade partial airfoil release events. We are issuing this AD to prevent LP compressor blade airfoil separations, damage to the engine, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Ultrasonic Inspection (UI) of LP Compressor Blade

(i) After the effective date of this AD, for LP compressor blades that have accumulated less than 1,800 cycles since new (CSN) or cycles since last inspection (CSLI), perform a UI of each LP compressor blade before the blade exceeds 2,400 CSN or CSLI. Repeat the UI of the blade before exceeding 2,400 CSLI.

(ii) For any LP compressor blade that exceeds 1,800 CSN on the effective date of this AD, inspect the blade before exceeding 600 flight cycles after the effective date of this AD or before exceeding 3,600 CSN, whichever occurs first. Thereafter, perform the repetitive inspections before exceeding 2,400 CSLI.

(iii) For any LP compressor blade that exceeds 2,200 CSLI on September 23, 2014 (the effective date of AD 2014–16–10), inspect the blade before exceeding 3,000 CSLI or before further flight, whichever occurs later. Thereafter, perform the repetitive inspections before exceeding 2,400 CSLI.

(iv) Use paragraph 3, excluding subparagraphs 3.C.(2)(b), 3.D.(2), and 3.G, of RR Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AH465, Revision 2, dated May 11, 2016, to perform the inspections required by this AD.

(2) Use of Replacement Blades

(i) After the effective date of this AD, LP compressor blade, P/N FK23411, FK25441, FK25968, FW11901, FW15393, FW23643, FW23741, FW23744, KH23403, or KH23404, that has accumulated at least 2,400 CSN or CSLI is eligible for installation if the blade has passed the UI required by this AD.

(ii) Reserved.

(f) Credit for Previous Actions

You may take credit for the UI required by paragraph (e) of this AD, if you performed the UI before the effective date of this AD using RR Alert NMSB RB.211–72–AH465, Revision 1, dated July 10, 2015, or the initial issue, dated July 15, 2013; or RR NMSB No. RB.211–72–G702, dated May 23, 2011; or RR NMSB No. RB.211–72–G872, Revision 2, dated March 8, 2013, or earlier revisions; or RR NMSB No. RB.211–72–H311, dated March 8, 2013; or the Engine Manual E-Trent-1RR, Task 72–31–11–200–806.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency, (EASA) AD 2016–0141, dated July 18, 2016 (corrected July 20, 2016), for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2012–1327.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce plc Alert Non-Modification Service Bulletin RB.211–72–AH465, Revision 2, dated May 11, 2016.

(ii) Reserved.

(3) For Rolls-Royce plc service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332– 242424; fax: 011–44–1332–245418, or email: *http://www.rolls-royce.com/contact/civil_team.jsp.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on January 27, 2017.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2017–02921 Filed 2–14–17; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, and 260

[Release Nos. 33–10305; 34–80023; 39–2515; File No. S7–26–11]

RIN 3235–AL17

Exemptions for Security-Based Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule.

SUMMARY: We are adopting amendments to the expiration dates in our interim final rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as ''securities'' under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the amendments, the expiration dates in the interim final rules will be February 11, 2018.

DATES: The amendments are effective February 15, 2017. See Section I of the **SUPPLEMENTARY INFORMATION** concerning amendment of expiration dates in the interim final rules.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: Interim final Rule 240 under the Securities Act of 1933 (''Securities Act''),[1] interim final Rules 12a–11 and 12h–1(i) under the Securities Exchange Act of 1934 (''Exchange Act''),[2] and interim final Rule 4d–12 under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[3]

I. Amendment of Expiration Dates in the Interim Final Rules

A. Background Regarding the Interim Final Rules

In July 2011, we adopted interim final Rule 240 under the Securities Act, interim final Rules 12a–11 and 12h–1(i) under the Exchange Act, and interim final Rule 4d–12 under the Trust Indenture Act (collectively, the ''interim final rules'').[4] The interim final rules provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that prior to July 16, 2011 (''Title VII effective date'') were ''security-based swap agreements'' and are defined as ''securities'' under the Securities Act and the Exchange Act as of the Title VII effective date due solely to the provisions of Title VII of the Dodd-Frank Act.[5] The interim final rules exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act,[6] provided certain conditions are met.[7] We have adopted amendments to the interim final rules to extend the expiration dates in the interim final rules, first from February 11, 2013 to February 11, 2014,[8] and then from February 11, 2014 to February 11, 2017.[9]

Title VII amended the Securities Act and the Exchange Act to include ''security-based swaps'' in the definition of ''security'' for purposes of those statutes.[10] As a result, ''security-based swaps'' became subject to the provisions of the Securities Act and the Exchange Act and the rules and regulations thereunder applicable to ''securities.'' [11]

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

[4] *See* 17 CFR 230.240, 17 CFR 240.12a–11, 17 CFR 240.12h–1, and 17 CFR 260.4d–12. *See also Exemptions for Security-Based Swaps,* Release No. 33–9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) (''Interim Final Rules Adopting Release'').

[5] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The provisions of Title VII generally were effective on July 16, 2011 (360 days after enactment of the Dodd-Frank Act), unless a provision requires a rulemaking. If a Title VII provision requires a rulemaking, it will go into effect ''not less than'' 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* Section 774 of the Dodd-Frank Act.

[6] The category of security-based swaps covered by the interim final rules involves those that would have been defined as ''security-based swap agreements'' prior to the enactment of Title VII. That definition of ''security-based swap agreement'' does not include security-based swaps that are based on or reference only loans and indexes only of loans. The Division of Corporation Finance issued a no-action letter that addressed the availability of the interim final rules to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. *See* Cleary Gottlieb Steen & Hamilton LLP (Jul. 15, 2011). The Cleary Gottlieb No-Action Letter will remain in effect for so long as the interim final rules remain in effect.

[7] The security-based swap that is exempt must be a security-based swap agreement (as defined prior to the Title VII effective date) and entered into between eligible contract participants (as defined prior to the Title VII effective date). *See* Rule 240 under the Securities Act [17 CFR 230.240]. *See also* Interim Final Rules Adopting Release.

[8] *See Extension of Exemptions for Security-Based Swaps,* Release No. 33–9383 (Jan. 29, 2013), 78 FR 7654 (Feb. 4, 2013).

[9] *See Extension of Exemptions for Security-Based Swaps,* Release No. 33–9545 (Feb. 5, 2014), 79 FR 7570 (Feb. 10, 2014) (''Extension Adopting Release'').

[10] *See* Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

[11] The Securities Act requires that any offer and sale of a security must be either registered under the Securities Act or made pursuant to an exemption from registration. *See* Section 5 of the Securities Act [15 U.S.C. 77e]. In addition, certain provisions of the Exchange Act relating to the registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act of 1939 (''Trust Indenture Act'') [15 U.S.C. 77aaa *et seq.*] also potentially could apply to security-based swaps. The provisions of Section 12 of the Exchange Act could, without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange. *See* Section 12(a) of the Exchange Act [15 U.S.C. 78l(a)]. In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act could be required if the security-based swap is considered an equity security and held of record by either 2000 persons or 500 persons who are not accredited investors at the end of a fiscal year. *See* Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)]. Further, without an exemption, the Trust Indenture Act could require qualification of an indenture for security-based swaps considered to be debt. *See* 15 U.S.C. 77aaa *et seq.*

The interim final rules were intended to allow security-based swap agreements that became security-based swaps on the Title VII effective date to continue to trade as they did prior to the enactment of Title VII.[12] We adopted the interim final rules because, among other things, we were concerned about disrupting the operation of the security-based swaps market while we evaluated the implications for security-based swaps under the Securities Act and the Exchange Act as a result of the inclusion of the term ''security-based swap'' in the definition of ''security'' for purposes of those statutes.[13]

At the time of adoption of the interim final rules in July 2011, we requested comment on various aspects of the interim final rules.[14] In response to the request for comment, commenters expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act, including the exemption in Section 4(a)(2), for security-based swap transactions entered into solely between eligible contract participants (''ECPs'') due to the operation of certain trading platforms and the publication or distribution of other information regarding security-based swaps.[15] Commenters indicated that the publication or distribution of certain communications involving security-based swaps on an unrestricted basis could be viewed as offers of those security-based swaps within the meaning of Section 2(a)(3) of the Securities Act,[16] and such communications would require compliance with the registration provisions of Section 5 of the Securities Act unless there is an available exemption from such registration requirements.[17] Further, such communications may be considered offers to persons who are not ECPs, even if such persons are not permitted to purchase the security-based swaps.[18] Under Section 5(e) of the Securities Act, it is unlawful to make offers or sales of security-based swaps to persons who are not ECPs unless the security-based swaps are registered under the Securities Act.[19] Commenters indicated that if there is no Securities Act exemption available with respect to a security-based swap transaction, the required registration of such transactions could negatively impact the security-based swaps market.[20]

As noted above, we twice have extended the expiration dates in the interim final rules.[21] These extensions have enabled us to continue our evaluation of the implications for security-based swaps as securities and determine whether other regulatory action is appropriate. We indicated when we extended the expiration dates that we were carefully considering the comments we had received on the interim final rules as part of our evaluation of the implications for security-based swaps resulting from the inclusion of the term ''security-based swap'' in the definition of ''security'' under the Securities Act and the Exchange Act.[22] We continue to consider those comments as we evaluate whether other regulatory action is appropriate, including the proposal discussed in the next section.

B. SBS Communications Proposal

Subsequent to the most recent extension of the expiration dates in the interim final rules, we proposed a rule under the Securities Act to provide that certain communications involving security-based swaps that may be purchased only by ECPs would not be deemed for purposes of Section 5 of the Securities Act to constitute offers of the security-based swaps that are the subject of such communications or any guarantees of such security-based swaps that are securities (''SBS Communications Proposal'').[23] The SBS Communications Proposal would cover the dissemination of price quotes that relate to security-based swaps that may be purchased only by ECPs and are traded or processed on or through certain trading platforms. The SBS Communications Proposal would enable price quotes relating to security-based swaps to be disseminated on an unrestricted basis without concern that such dissemination could jeopardize the availability of exemptions from the registration requirements of the Securities Act for transactions involving the security-based swaps that are the subject of such communications. The Commission requested comment on all aspects of the SBS Communications Proposal, including whether it should cover types of communications other than price quotes, such as communications characterized as research that relate to or discuss security-based swaps.[24] The Commission is evaluating the comments received and has not yet taken final action as to the SBS Communications Proposal.

C. Extension of the Interim Final Rules

In this release, we are extending the expiration dates in the interim final rules from February 11, 2017 to February 11, 2018. We believe that the interim final rules are needed to avoid disruption in the security-based swaps market while we continue to consider in a thorough and deliberative manner whether other regulatory action is appropriate. If the interim final rules expire on February 11, 2017, market participants entering into security-based swap transactions will have to consider whether they need to register the offer and sale of the security-based swaps under the Securities Act. Market participants also will have to consider whether they may be required to comply with the registration provisions of the Exchange Act applicable to classes of securities and the indenture provisions of the Trust Indenture Act. We believe that requiring compliance with these provisions while we continue to evaluate the implications for security-based swaps as securities and determine whether other regulatory action, including the SBS Communications Proposal, is appropriate could have an impact on the operation of the security-based swaps market. Thus, the interim

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[12] *See* Interim Final Rules Adopting Release.

[13] *Id.* Prior to the Title VII effective date, security-based swap agreements that became security-based swaps on the Title VII effective date were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions. *See* Section 2A of the Securities Act [15 U.S.C. 77b(b)–1)] and Section 3A of the Exchange Act [15 U.S.C. 78c–1], each as in effect prior to the Title VII effective date.

[14] *See* Interim Final Rules Adopting Release. The Commission also requested comment on certain of these matters in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency. *See Exemptions For Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9222 (Jun. 9, 2011), 76 FR 34920 (Jun. 15, 2011).

[15] *See* Extension Adopting Release.

[16] *See* 15 U.S.C. 77b(a)(3).

[17] *See* Extension Adopting Release.

[18] *Id.*

[19] *See* Section 5(e) of the Securities Act [15 U.S.C. 77e(e)]) (Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant).

[20] *See* Extension Adopting Release.

[21] *See* footnotes 8 and 9 above and accompanying text.

[22] *See* Extension Adopting Release.

[23] *See Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only By Eligible Contract Participants,* Release No. 33–9643 (Sep. 8, 2014), 79 FR 54224 (Sep. 11, 2014) (''SBS Communications Proposing Release'').

[24] *Id.* The SBS Communications Proposing Release discussed the types of communications covered and not covered by the proposal and included an extensive request for comment about communications characterized as research that relate to security-based swaps.

final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities may not comply with the applicable provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act.

Based on the foregoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to continue providing the exemptions from all provisions of the Securities Act (other than the Section 17(a) antifraud provisions), the registration requirements of the Exchange Act relating to classes of securities, and the indenture provisions of the Trust Indenture Act for those security-based swaps that prior to the Title VII effective date were security-based swap agreements, provided certain conditions are met. Accordingly, due to the interrelationship between the interim final rules and our continuing evaluation of further appropriate regulatory action, we have determined that it is necessary and appropriate to extend the expiration dates in the interim final rules from February 11, 2017 to February 11, 2018.[25] If we adopt further rules relating to issues raised in the SBS Communications Proposing Release about the application of the Securities Act or the other federal securities laws to security-based swaps before February 11, 2018, we may determine to alter the expiration dates in the interim final rules as part of that rulemaking. We only are extending the expiration dates in the interim final rules; we are not making any other changes to the interim final rules.

[25] In conjunction with the extension of the expiration dates in the interim final rules, we also extended certain of the temporary relief we adopted in July 2011 that provided exemptions from compliance with certain provisions of the Exchange Act to February 5, 2018. This relief was set to expire on February 5, 2017 and exempts security-based swap activities from the application of the Exchange Act other than certain antifraud and anti-manipulation provisions, all Exchange Act provisions related to security-based swaps added or amended by Title VII of the Dodd-Frank Act, including the amended definition of ''security'' in Section 3(a)(10), and certain other Exchange Act provisions. *See Order Extending Certain Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps and Request for Comment,* Release No. 34–79833 (Jan. 18, 2017), 82 FR 8467 (Jan. 25, 2017). *See also Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps,* Release No. 34–64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011).

II. Certain Administrative Law Matters

Section 553(b) of the Administrative Procedure Act[26] generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**. This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [27] Further, the Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[28] This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[29] We, for good cause, find that notice and solicitation of comment before adopting the amendments to the interim final rules is impracticable, unnecessary, or contrary to the public interest. We also find good cause not to delay the effective date of the amendments to the interim final rules.

For the reasons we discuss throughout this release, we believe that we have good cause to act immediately to adopt the amendments to the interim final rules to extend the expiration dates in the interim final rules. The extension of the expiration dates in the interim final rules is intended to minimize disruptions and costs to the security-based swaps market that could occur if the interim final rules expire. The interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we continue to evaluate the implications for security-based swaps as securities and determine whether other regulatory action, including the SBS Communications Proposal, is appropriate.

Absent an extension, the interim final rules will expire on February 11, 2017. The interim final rules have been in place since July 2011 and market participants have relied on them to enter into security-based swap transactions. Extending the expiration dates in the interim final rules will not affect the substantive provisions of the interim final rules and will allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we continue to evaluate the implications for security-based swaps as securities and determine whether other regulatory action, including the SBS Communications Proposal, is appropriate. Based on the foregoing and for the reasons we discuss throughout this release, we find that there is good cause to have the amendments to the interim final rules effective upon publication in the **Federal Register** and that notice and solicitation of comment in advance of the effectiveness of the amendments to the interim final rules is impracticable, unnecessary or contrary to the public interest.[30]

[26] 5 U.S.C. 553(b).

[27] *Id.*

[28] *See* 5 U.S.C. 553(d).

[29] *Id.*

III. Economic Analysis

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[31] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[32] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[33]

As discussed above, we are adopting amendments to the interim final rules to extend the expiration dates in the interim final rules to February 11, 2018. Extending the expiration dates in the interim final rules is intended to minimize disruptions and costs to the security-based swaps market that could

[30] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the federal agency promulgating the rule determines'').

[31] *See* 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

[32] *See* 15 U.S.C. 78w(a)(2).

[33] *Id.*

occur on the current expiration date of the interim final rules. The interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act.

The interim final rules currently in effect serve as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendments are measured. Because the extension of the expiration dates in the interim final rules maintains the status quo, we do not expect additional significant costs or benefits to result from the extension. We also do not expect the extension to have additional significant effects on efficiency, competition, or capital formation. The interim final rules will continue to exempt certain security-based swaps from all provisions of the Securities Act, other than the Section 17(a) antifraud provisions,[34] as well as exempt these security-based swaps from Exchange Act registration requirements, and from the provisions of the Trust Indenture Act, provided certain conditions are met.

In the alternative, we could allow the interim final rules to expire by not extending their expiration date. In this scenario, market participants who continue to effect security-based swap transactions would have to determine whether another exemption from the registration requirements of the Securities Act is available so that they may be able to rely on that exemption. If no Securities Act exemptions are available for a security-based swap transaction following the expiration of the interim final rules, such a transaction would have to be registered under the Securities Act. The counterparties to such a transaction also would have to consider whether they need to comply with the registration requirements of the Exchange Act and the indenture provisions of the Trust Indenture Act. We believe that requiring compliance with these provisions at this time for security-based swap transactions between ECPs likely would disrupt and impose new costs on this segment of the security-based swaps market. For example, if market participants are required to register the offer and sale of these security-based swaps under the Securities Act, they would have to incur the additional costs of such registration, including legal and accounting costs, as well as the costs associated with preparing the disclosure documents describing these security-based swaps. Market participants also may incur costs associated with the registration of these security-based swaps under the Exchange Act and compliance with the Trust Indenture Act, including preparing indentures and arranging for the services of a trustee.

It is also possible that if we were to allow the interim final rules to expire, efficiency and capital formation may be impaired. Failing to extend the expiration dates in the interim final rules may result in disruptions and costs to the security-based swaps market that could impede efficiency. Additionally, some market participants may not continue to participate in certain security-based swap transactions if compliance with these provisions were infeasible (economically or otherwise). In that case, capital formation may be impaired to the extent that some market participants use these security-based swap transactions to hedge risks, including those related to the issuance of the referenced securities (as may occur with equity swaps and the issuance of convertible bonds). For example, if registration of these transactions is required under our existing Securities Act registration scheme, issuers of security-based swaps may be forced to provide disclosure about their security-based swap positions that might not otherwise be disclosed to the market. This position disclosure could lead to a decreased use of security-based swaps by these market participants, which could potentially impair capital formation to the extent counterparties might use security-based swaps for hedging their exposure to issuers of referenced securities. Such a decrease in the use of security-based swaps also could lead to reduced liquidity of the underlying securities, which could raise the costs of capital for issuers of those securities.

We also recognize that there may be certain benefits associated with letting the interim final rules expire. Without the exemptions provided for in the interim final rules, a market participant may have to file a registration statement covering the offer and sale of the security-based swaps, may have to register the class of security-based swaps that it has issued under the Exchange Act, and may have to satisfy the applicable provisions of the Trust Indenture Act, which would provide investors with additional information and in certain cases civil remedies. For example, a registration statement covering the offer and sale of the security-based swaps may provide certain information about the market participants, the security-based swap contract terms, and the identification of the particular reference securities, issuers, or loans underlying the security-based swap. Additionally, although investors currently may pursue antifraud actions in connection with the purchase and sale of security-based swaps under Section 10(b) of the Exchange Act,[35] if market participants were required to file registration statements under the Securities Act, investors may also be able to pursue civil remedies under Sections 11 or 12 of the Securities Act.[36]

IV. Paperwork Reduction Act

The interim final rules do not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[37] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we did not submit the interim final rules to the Office of Management and Budget for review in accordance with the PRA.[38] We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment.

V. Regulatory Flexibility Act Certification

We hereby certify pursuant to 5 U.S.C. 605(b) that extending the expiration dates in the interim final rules will not have a significant economic impact on a substantial number of small entities.[39] The interim final rules apply only to counterparties that may engage in security-based swap transactions in reliance on the interim final rule providing an exemption under the Securities Act. The interim final rule under the Securities Act provides that the exemption is available only to security-based swaps that are entered into between eligible contract participants, as that term is defined in Section 1a(12) of the Commodity Exchange Act as in effect prior to the Title VII effective date, and other than with respect to persons determined by

[34] *See* 15 U.S.C. 77q(a).

[35] *See* 15 U.S.C. 78j(b).

[36] *See* 15 U.S.C. 77k–l. Regardless of the extension, however, we can always pursue an antifraud action in the offer and sale of security-based swaps under Section 17(a) of the Securities Act. *See* 15 U.S.C. 77q.

[37] 44 U.S.C. 3501 *et seq.*

[38] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[39] We certified pursuant to 5 U.S.C. 605(b) that the interim final rules will not have a significant economic impact on a substantial number of small entities. *See* Interim Final Rules Adopting Release. We received no comments on that certification.

the CFTC to be eligible contract participants pursuant to Section 1a(12)(C) of the Commodity Exchange Act. Based on our existing information about the security-based swaps market, including our existing information about participants in the security-based swaps market, we believe that the interim final rules apply to few, if any, small entities. For this reason, the extension of the expiration dates in the interim final rules should not have a significant economic impact on a substantial number of small entities.

VI. Statutory Authority and Text of the Rules and Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 19 and 28 of the Securities Act, Sections 12(h), 23(a) and 36 of the Exchange Act, and Section 304(d) of the Trust Indenture Act.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

Text of the Rules and Amendments

For the reasons set out in the preamble, the Commission amends 17 CFR parts 230, 240, and 260 as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.240 [Amended]

■ 2. Section 230.240 is revised to read as follows:

§ 230.240 Exemption for certain security-based swaps.

(a) Except as expressly provided in paragraph (b) of this section, the Act does not apply to the offer or sale of any security-based swap that is:

(1) A *security-based swap agreement,* as defined in Section 2A of the Act (15 U.S.C. 77b(b)–1) as in effect prior to July 16, 2011; and

(2) Entered into between eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect prior to July 16, 2011, other than a person who is an eligible contract participant under Section 1a(12)(C) of the Commodity Exchange Act as in effect prior to July 16, 2011).

(b) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

(c) This section will expire on February 11, 2018.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

§ 240.12a–11 [Amended]

■ 4. Section 240.12a–11 is revised to read as follows:

§ 240.12a–11 Exemption of security-based swaps sold in reliance on Securities Act of 1933 Rule 240 (§ 230.240) from section 12(a) of the Act.

(a) The provisions of Section 12(a) of the Act (15 U.S.C. 78l(a)) do not apply to any security-based swap offered and sold in reliance on § 230.240 of this chapter.

(b) This section will expire on February 11, 2018.

§ 240.12h–1 [Amended]

■ 5. In § 240.12h–1, paragraph (i) is revised to read as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(i) Any security-based swap offered and sold in reliance on § 230.240 of this chapter. This section will expire on February 11, 2018.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 6. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77c, 77ddd, 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

§ 260.4d–12 [Amended]

■ 7. Section 260.4d–12 is revised to read as follows:

§ 260.4d–12 Exemption for security-based swaps offered and sold in reliance on Securities Act of 1933 Rule 240 (§ 230.240).

Any security-based swap offered and sold in reliance on § 230.240 of this chapter, whether or not issued under an indenture, is exempt from the Act. This section will expire on February 11, 2018.

By the Commission.

Dated: February 10, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–03121 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in March 2017. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective March 1, 2017.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*Murphy.Deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400 ext. 3451.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for March 2017.[1]

The March 2017 interest assumptions under the benefit payments regulation will be 1.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for January 2017, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during February 2017, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 281 is added to the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
281	3–1–17	4–1–17	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 281 is added to the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
281	3–1–17	4–1–17	1.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, by

Deborah Chase Murphy,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2017–02761 Filed 2–14–17; 8:45 am]

BILLING CODE 7709–02–P

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2016–0055; MMAA104000]

RIN 1010–AD95

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Civil Penalties Inflation Adjustments

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This rule adopts and finalizes the interim final rule which adjusted the level of the maximum civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Oil Pollution Act of 1990 (OPA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIA of 2015), and Office of Management and Budget (OMB) guidance. This rule also implements the 2017 adjustment of the level of the maximum civil monetary penalties contained in the BOEM regulations pursuant to OCSLA, OPA, FCPIA of 2015 and OMB guidance. The 2017 adjustment of 1.01636 percent accounts for one year of inflation spanning from October 2015 to October 2016.

DATES: This rule is effective on February 15, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Sebastian, Office of Policy, Regulation and Analysis, Bureau of Ocean Energy Management, at (202) 513–0507 or by email at *robert.sebastian@boem.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation (43 U.S.C. 1350(b)(1)). The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 104–410) (FCPIA of 1990) required that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every four years.

Similarly, the Oil Pollution Act of 1990 (OPA) authorizes the Secretary of the Interior to impose civil penalties for failure to comply with financial responsibility regulations that implement OPA. The FCPIA of 1990 required that all civil monetary penalties, including the OPA maximum civil penalty amount, be adjusted at least once every four years.

The FCPIA of 2015 requires Federal agencies to promulgate annual inflation adjustments for civil monetary penalties. Specifically, agencies must adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking (IFR) in 2016, and make subsequent annual adjustments for inflation, beginning in 2017. Agencies are required to publish the annual inflation adjustments in the **Federal Register** by no later than January 15, 2017, and by no later than January 15 each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

OMB Memorandum M–17–11 (Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015), which can be found at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf,* explains agency responsibilities for: Identifying applicable penalties and performing the annual adjustment; publishing in the **Federal Register**; finalizing 2016 interim final rules; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BOEM is promulgating this 2017 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB guidance. A proposed rule is not required because the FCPIA of 2015 states that agencies shall adjust civil monetary penalties ''notwithstanding Section 553 of the Administrative Procedure Act.'' (FCPIA of 2015 at sec. 4(b)(2)). Accordingly, Congress expressly exempted the annual inflation adjustments implemented pursuant to the FCPIA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act (APA), allowing them to be published as a final rule. This interpretation of the statute is confirmed by OMB Memorandum M–17–11. (OMB Memorandum M–17–11 at 3 (''This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'')).

II. 2016 Adjustments and Interim Final Rule

BOEM last adjusted the level of civil monetary penalties in BOEM regulations through an interim final rule (IFR), RIN 1010–AD95 [81 FR 43066], which was published on July 1, 2016, and became effective on August 1, 2016. The IFR included catch-up adjustments pursuant to the requirements of the FCPIA of 2015 and OMB guidance through October 2015. Although the IFR was effective as of August 1, 2016, the IFR included a request for public comments. The public comment period closed on August 30, 2016. BOEM received no comments on the IFR and is therefore finalizing that rulemaking as originally implemented by the IFR. OMB Memorandum M–17–11 authorizes agencies to finalize their 2016 inflation adjustment IFR in the same rulemaking as the 2017 adjustments.

III. Calculation of 2017 Adjustments

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M–17–11, BOEM has identified applicable civil monetary penalties and calculated the necessary inflation adjustments. The 2016 adjustments were based upon the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the calendar year of the previous adjustment (or in the year of establishment, if subsequent adjustments were made pursuant to the FCPIA of 1990) and the October 2015 CPI–U. The 2017 adjustments are based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U. Consistent with the OMB Memorandum M–17–11, BOEM divided the October 2016 CPI–U by the October 2015 CPI–U (241.729/237.838). This resulted in a multiplying factor of 1.01636.

For 2017, OCSLA and the FCPIA of 2015 require that BOEM adjust the OCSLA maximum civil penalty amount.

To accomplish this, BOEM multiplied the existing OCSLA maximum civil penalty amount ($42,017) by the multiplying factor ($42,017 × 1.01636 = $42,704.40). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest $1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is $42,704.

For 2017, the FCPIA of 2015 requires that BOEM adjust the OPA maximum civil penalty amount. The statutory OPA maximum civil penalty amount ($44,539) was multiplied by the multiplying factor (44,539 × 1.01636 = $45,267.66). The FCPIA of 2015 requires that the OPA maximum civil penalty amount be rounded to the nearest $1.00 at the end of the calculation process. Accordingly, the adjusted OPA maximum civil penalty is $45,268.

The adjusted penalty levels shall take effect immediately upon the effective date of the adjustment. Pursuant to the FCPIA of 2015, the increase in the OCSLA and OPA maximum civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation(s) predates such increase. Consistent with the provisions of the OCSLA, OPA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalties per day per violation:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 550.1403	Failure to comply per day per violation	$42,017	1.01636	$42,704
30 CFR 553.51(a)	Failure to comply per day per violation	44,539	1.01636	45,268

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M–17–11 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to reduce uncertainty and to promote predictability and the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The FCPIA of 2015 expressly exempts annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. (*See* FCPIA of 2015 at § 4(b)(2); OMB Memorandum M–17–11 at 3). Thus, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). As a regulation of an administrative nature, this rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). Therefore, a detailed statement under NEPA is not required. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Outer continental shelf, Oil and gas exploration, Oil pollution, Liability, Limit of liability, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Dated: February 3, 2017.

Richard T. Cardinale,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the BOEM adopts as final the interim final rule amending 30 CFR parts 550 and 553, which was published at 81 FR 43066 on July 1, 2016, as a final rule with the following changes:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is $42,704 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

■ 4. In § 553.51, revise paragraph (a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $45,268 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2017–02983 Filed 2–14–17; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2016–0382; FRL–9959–43–OAR]

RIN 2060–AT15

Revisions to Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the Environmental Protection Agency (EPA) received an adverse comment, we are withdrawing the direct final rule titled, ''Revisions to Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources.''

DATES: Effective February 15, 2017, the EPA withdraws the direct final rule published at 81 FR 83160, on November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Ms. Kimberly Garnett, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: The direct final rule, ''Revisions to Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources,'' published on November 21, 2016, at 81 FR 83160. We stated in that direct final rule that if we received adverse comment by December 21, 2016, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule requesting that the EPA delete or reserve section(s) in the rule that conflict with the intended revisions. We will address the comment in a subsequent final action, which will be based on the parallel proposed rule also published on November 21, 2016, at 81 FR 83189. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring systems, Particulate matter, Procedures.

Dated: February 8, 2017.

Sarah Dunham,

Acting Assistant Administrator.

[FR Doc. 2017–03063 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL–9959–26–OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2016 Compliance Year

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of emission allowance allocations to certain units under the new unit set-aside (NUSA) provisions of the Cross-

State Air Pollution Rule (CSAPR) federal implementation plans (FIPs). EPA has completed final calculations for the second round of NUSA allowance allocations for the 2016 compliance year of the CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 Trading Programs. EPA has posted spreadsheets showing the second-round 2016 NUSA allocations of CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances to new units as well as the allocations to existing units of the remaining CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances not allocated to new units in either round of the 2016 NUSA allocation process. EPA will record the allocated CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances in sources' Allowance Management System (AMS) accounts by February 15, 2017.

DATES: February 15, 2017.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Robert Miller at (202) 343–9077 or *miller.robertl@epa.gov* or to Kenon Smith at (202) 343–9164 or *smith.kenon@epa.gov*.

SUPPLEMENTARY INFORMATION: Under the CSAPR FIPs, a portion of each state budget for each of the CSAPR trading programs is reserved as a NUSA from which allowances are allocated to eligible units through an annual one- or two-round process. EPA has described the CSAPR NUSA allocation process in five NODAs previously published in the **Federal Register**: 81 FR 33636 (May 27, 2016); 81 FR 50630 (August 2, 2016); 81 FR 63156 (September 14, 2016); 81 FR 80593 (November 16, 2016) and 81 FR 89035 (December 9, 2016). In the most recent of these previous NODAs, EPA provided notice of preliminary lists of new units eligible for second-round 2016 NUSA allocations of CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances and provided an opportunity for the public to submit objections.

EPA received no objections to the preliminary lists of new units eligible for second-round 2016 NUSA allocations of CSAPR NO_X Annual, SO_2 Group 1, or SO_2 Group 2 allowances whose availability was announced in the December 9 NODA. EPA is therefore making second-round 2016 NUSA allocations of CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances to the new units identified on these lists in accordance with the procedures set forth in 40 CFR 97.412(a)(9) and (12), 97.612(a)(9) and (12), and 97.712(a)(9) and (12).

As described in the December 9 NODA, any allowances remaining in the CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 NUSAs for a given state and control period after the second round of NUSA allocations to new units is completed are to be allocated to the existing units in the state according to the procedures set forth in 40 CFR 97.412(a)(10) and (12), 97.612(a)(10) and (12), and 97.712(a)(10) and (12). EPA has determined that CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances do remain in the NUSAs for a number of states following completion of second-round 2016 NUSA allocations; accordingly, EPA is allocating these allowances to existing units. The NUSA allowances are generally allocated to the existing units in proportion to the allocations previously made to the existing units under 40 CFR 97.411(a)(1), 97.611(a)(1), and 97.711(a)(1), adjusted for rounding.

Under 40 CFR 97.412(b)(10), 97.612(b)(10), and 97.712(b)(10), any allowances remaining in the CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 Indian country NUSAs for a given state and control period after the second round of Indian country NUSA allocations to new units are added to the NUSA for that state or are made available for allocation by the state pursuant to an approved SIP revision. No new units eligible for allocations of CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances from any 2016 Indian country NUSA have been identified, and no state has an approved SIP revision governing allocation of 2016 CSAPR NUSA allowances. The Indian country NUSA allowances are therefore being added to the NUSAs for the respective states and are included in the pools of allowances that are being allocated to existing units under 40 CFR 97.412(b)(10) and (12), 97.612(b)(10) and (12), and 97.712(b)(10) and (12).

The final unit-by-unit data and allowance allocation calculations are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2016_NOx_Annual_2nd_Round_Final_Data_New_Units'', ''CSAPR_NUSA_2016_SO2_2nd_Round_Final_Data_New_Units'', ''CSAPR_NUSA_2016_NOx_Annual_2nd_Round_Final_Data_Existing_Units'', and ''CSAPR_NUSA_2016_SO2_2nd_Round_Final_Data_Existing_Units'', available on EPA's Web site at *https://www.epa.gov/csapr/csapr-compliance-year-2016-nusa-nodas.*

Pursuant to CSAPR's allowance recordation timing requirements, the allocated NUSA allowances will be recorded in sources' AMS accounts by February 15, 2017. EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that NUSA allocations of CSAPR NO_X Annual, SO_2 Group 1, and SO_2 Group 2 allowances are subject to potential correction if a unit to which NUSA allowances have been allocated for a given compliance year is not actually an affected unit as of January 1 of the compliance year.[1]

Authority: 40 CFR 97.411(b), 97.611(b), and 97.711(b).

January 27, 2017.

Richard Haeuber,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2017–03069 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0705; FRL–9957–00]

Thiamethoxam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of thiamethoxam in or on bananas. Syngenta Crop Protection, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 15, 2017. Objections and requests for hearings must be received on or before April 17, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0705, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

[1] *See* 40 CFR 97.411(c), 97.611(c), and 97.711(c).

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0705 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 17, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0705, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of November 23, 2015 (80 FR 72941) (FRL–9936–73), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8401) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27409–8300. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the insecticide, thiamethoxam, in or on banana at 0.04 parts per million (ppm). That document referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the level at which the tolerance is being established. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Tolerances for residues of thiamethoxam are listed in 40 CFR 180.565 and are expressed in terms of the combined residues of the insecticide thiamethoxam and its metabolite CGA–322704. Metabolite CGA–322704 is also the registered active ingredient clothianidin (tolerance listings in 40 CFR 180.586). Clothianidin (hereinafter referred to as CGA–322704) has a complete toxicological database and appears to have effects in mammals that are different from those of thiamethoxam. A separate risk assessment that addresses risks from CGA–322704 residues resulting from the direct application of CGA–322704 (clothianidin), as well as risks from residues of CGA–322704 coming from thiamethoxam uses has been conducted, and there are no risk estimates of concern as a result of the proposed tolerance for thiamethoxam residues in imported bananas. This risk assessment can be found at *http:www.regulations.gov* in docket ID number EPA–HQ–OPP–2015–0705.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for thiamethoxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with thiamethoxam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In mammals, toxicological effects are seen primarily in the liver, kidney, testes, and blood cellular system. In addition, developmental neurological effects were observed in rats. These developmental effects are being used to assess risks associated with acute exposures to thiamethoxam, and the liver and testicular effects are the basis for assessing longer-term exposures.

There is no indication of quantitative or qualitative susceptibility in the developmental toxicity studies. There is evidence of quantitative susceptibility in the developmental neurotoxicity study and both two-generation reproductive studies. However, clear no observed adverse effects levels (NOAELs) were identified for the susceptibility in the 2-generation reproduction and developmental neurotoxicity (DNT) studies and the endpoints and doses chosen for risk assessment are protective of the susceptibility observed in these studies.

Thiamethoxam is classified as ''not likely to be carcinogenic to humans'' at levels below which certain amounts of metabolites are produced. The liver tumors that were observed in the mouse have been demonstrated to be a result of a non-genotoxic mode of action dependent on sufficient amounts of a hepatotoxic metabolite being produced. Although humans are qualitatively capable of producing the active metabolite, thiamethoxam is unlikely to pose a cancer risk to humans unless sufficient amounts of metabolites are persistently formed to drive a carcinogenic response. The chronic endpoint selected for regulating exposure to thiamethoxam is sufficiently protective of the key events (perturbation of liver metabolism, hepatotoxicity/regenerative proliferation) in the animal mode of action. At those levels, the Agency does not expect sufficient generation of the necessary metabolites to elicit a carcinogenic response; therefore, separate quantification of carcinogenic potential is not required.

Specific information on the studies received and the nature of the adverse effects caused by thiamethoxam as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http:www.regulations.gov* in the document titled ''*Thiamethoxam. Human Health Risk Assessment for Tolerances on Imported Bananas*'' on page 33 in docket ID number EPA–HQ–OPP–2015–0705.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides*.

A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIAMETHOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations including infants and children).	NOAEL = 34.5 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Acute RfD = 0.35 mg/kg/day. aPAD = 0.35 mg/kg/day.	Rat Developmental Neurotoxicity study. LOAEL = 298.7 mg/kg/day based on decreased body weight and reduced brain morphometric measurements.
Chronic dietary (All populations)	NOAEL= 1.2 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.012 mg/kg/day. cPAD = 0.012 mg/kg/day.	2-Generation reproduction study. LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F_1 generation males. 2-Generation reproduction study, LOAEL = 156 mg/kg/day (males), not determined (females) based on sperm abnormalities and germ cell loss in F_1 males.
Incidental oral short-term infants/children <6 years old (1 to 30 days).	NOAEL= 31.6 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	28-day Dog study. LOAEL = 47.7/43.0 (M/F) mg/kg/day based on body weight loss; leukopenia and increased hematocrit, hemoglobin and erythrocyte count; increased plasma urea and creatinine; reduced thymus weight in males and females, increased thyroid weight in males and reduced brain weight in females; and, histopathological changes in liver, thymus and spleen.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIAMETHOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Dermal short-term adults (1 to 30 days).	Oral study NOAEL = 1.2 mg/kg/day (dermal absorption rate = 5%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2-Generation reproduction study; 1998. LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F_1 generation males. 2-Generation reproduction study; 2004. LOAEL = 156 mg/kg/day (males), not determined (females) based on sperm abnormalities and germ cell loss in F_1 males.
Dermal short-term infants/children <6 years old (1 to 30 days).	Dermal study NOAEL= 60 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Rat 28-Day Dermal Toxicity Study. LOAEL = 250 (females) mg/kg/day based on increased plasma glucose, triglyceride levels, and alkaline phosphatase activity and inflammatory cell infiltration in the liver and necrosis of single hepatocytes in females.
Inhalation short-term adults (1 to 30 days).	Oral study NOAEL= 1.2 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2-Generation reproduction study. LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F_1 generation males. 2-Generation reproduction study. LOAEL = 156 mg/kg/day (males), not determined (females) based on sperm abnormalities and germ cell loss in F_1 males.
Inhalation short-term infants/children <6 years old (1 to 30 days).	Inhalation (or oral study NOAEL = 31.6 mg/kg/day (inhalation toxicity = oral toxicity). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	28-day Dog study. LOAEL = 47.7/43.0 (M/F) mg/kg/day based on body weight loss; leukopenia and increased hematocrit, hemoglobin and erythrocyte count; increased plasma urea and creatinine; reduced thymus weight in males and females, increased thyroid weight in males and reduced brain weight in females; and, histopathological changes in liver, thymus and spleen.
Cancer (Oral, dermal, inhalation).	"Not Likely to be Carcinogenic to Humans" based on convincing evidence that a non-genotoxic mode of action for liver tumors was established in the mouse. Quantification of cancer risk is *not* required.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiamethoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing thiamethoxam tolerances in 40 CFR 180.565. EPA assessed dietary exposures from thiamethoxam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for thiamethoxam. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from USDA's NHANES/WWEIA. As to residue levels in food, the chronic analysis is based on tolerance levels and anticipated residues calculated from field trial data for selected commodities and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that thiamethoxam does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiamethoxam in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiamethoxam. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of thiamethoxam for acute exposures are estimated to be 131.77 parts per billion (ppb) for surface water and 4.66 ppb for ground water and for chronic exposures are estimated to be 11.31 ppb for surface water and 4.66 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 131.77 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 11.31 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiamethoxam is currently registered for the following uses that could result in residential exposures: Turf and indoor environments (crack-and-crevice uses). EPA assessed residential exposure using the following assumptions: For residential handlers, short-term dermal and inhalation exposure is anticipated from both the lawn/turf and indoor crack-and-crevice uses. In terms of post application exposure, short-term dermal and incidental oral exposures are anticipated from both the lawn/turf and the crack-and-crevice uses. These exposures are expected from activities on turf such as playing, mowing, golfing, hand-to-mouth, object-to-mouth, incidental soil ingestion, and from contacting treated carpets. Post application inhalation exposure is also anticipated from indoor crack-and-crevice applications. The Agency selected only the most conservative, or worst case, residential adult and child scenarios to be included in the aggregate estimates, based on the lowest overall MOE (*i.e.,* highest risk estimates). The worst case residential exposures for adults and children 1 to 2 years old were associated with post-application exposure to treated turf. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Thiamethoxam is a member of the neonicotinoid class of pesticides and produces, as a metabolite, another neonicotinoid, CGA–322704. Structural similarities or common effects do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). Although CGA–322704 and thiamethoxam bind selectively to insect nicotinic acetylcholine receptors (nAChR), the specific binding site(s)/receptor(s) for CGA–322704, thiamethoxam and the other neonicotinoids are unknown at this time. Additionally, the commonality of the binding activity itself is uncertain, as preliminary evidence suggests that CGA–322704 operates by direct competitive inhibition, while thiamethoxam is a non-competitive inhibitor. Furthermore, even if future research shows that neonicotinoids share a common binding activity to a specific site on insect nAChRs, there is not necessarily a relationship between this pesticidal action and a mechanism of toxicity in mammals. Structural variations between the insect and mammalian nAChRs produce quantitative differences in the binding affinity of the neonicotinoids towards these receptors which, in turn, confers the notably greater selective toxicity of this class towards insects, including aphids and leafhoppers, compared to mammals. While the insecticidal action of the neonicotinoids is neurotoxic, the most sensitive regulatory endpoint for CGA–322704 is based on unrelated effects in mammals, including changes in body and thymus weights, delays in sexual maturation, and still births. Additionally, the most sensitive toxicological effect in mammals differs across the neonicotinoids (such as testicular tubular atrophy with thiamethoxam, and mineralized particles in thyroid colloid with imidacloprid). Therefore, unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to thiamethoxam and any other substances and thiamethoxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that thiamethoxam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity, and to evaluate the cumulative effects of such chemicals, see the policy statements concerning common mechanism determinations, and procedures for cumulating effects from substances found to have a common mechanism, released by OPP on EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the developmental studies, there was no evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to *in utero* exposure to thiamethoxam. Effects in the young were seen in the presence of maternal toxicity. There was evidence of quantitative susceptibility in the developmental neurotoxicity study and both two-generation reproductive studies. Although there was evidence of increased quantitative susceptibility, there are no residual uncertainties with regard to pre- and/or postnatal toxicity following *in utero* exposure to rats or rabbits and pre and/or post-natal exposures to rats. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment, the degree of concern for the effects observed in the studies is low because the developmental/offspring effects observed in the studies are well characterized and clear NOAELs/LOAELs have been identified in the studies for the effects of concern. Additionally, the Agency is confident that the endpoints and PODs selected

for risk assessment are protective of potential developmental/reproductive effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for thiamethoxam is complete.

ii. Evidence of neurotoxicity was seen in the acute and developmental neurotoxicity studies. However, there is a low degree of concern for the potential neurotoxic effects of thiamethoxam since clear NOAELs were identified for the neurotoxic effects, the neurotoxic effects were not the most sensitive endpoint in the toxicity database and the endpoints chosen for risk assessment are protective of any potential neurotoxicity.

iii. There is no evidence that thiamethoxam results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies. There was evidence of quantitative susceptibility in the developmental neurotoxicity study and both two-generation reproductive studies, however, for the reasons cited above in section III.D.2., the Agency is confident that the endpoints and PODs selected for risk assessment are protective of potential developmental/reproductive effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary exposure assessments are based on high-end residue levels and processing factors, both of which account for parent and metabolites of concern, and the assumption of 100 PCT for all registered crops. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to thiamethoxam in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by thiamethoxam.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiamethoxam will occupy 9.5% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiamethoxam from food and water will utilize 45% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiamethoxam is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiamethoxam is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to thiamethoxam.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 500 for adults and 580 for children 1<2 years old. Because EPA's level of concern for thiamethoxam is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, thiamethoxam is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for thiamethoxam.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A. and based on the lack of chronic risk discussed in Unit III.E.2., thiamethoxam is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thiamethoxam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has established an MRL for thiamethoxam in bananas at 0.02 mg/kg which is different than the U.S. tolerance of 0.3 ppm. At this time, the Codex and EPA residue definitions are different (Codex's MRL is for the parent compound, thiamethoxam only, while EPA's is thiamethoxam plus metabolite CGA–322704); therefore, it is not possible to harmonize with the Codex MRL.

C. Response to Comments

Three comments were received in response to the Notice of Filing. One

simply said ''Good.'' The other two comments noted general concerns about approving ''more herbicides and pesticides from Dow, Bayer, and Monsanto'' and the toxicity of this chemical, stating, in part, that ''food should not be contaminated with these chemicals.'' The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops; however, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. EPA has assessed the effects of this chemical on human health and determined that aggregate exposure to it will be safe. These comments provide no information to support a different conclusion.

D. Revisions to Petitioned-For Tolerances

The submitted banana field trial data support a tolerance of 0.03 ppm, instead of the petitioned-for tolerance of 0.04 ppm, in whole bananas. The petitioner used a combined limit of quantitation (LOQ) different from that used by the Agency for the input dataset of the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedure. The combined LOQ used by EPA resulted in a recommended tolerance of 0.03 ppm.

V. Conclusion

Therefore, a tolerance is established for residues of thiamethoxam, including its metabolites and degradates, in or on banana at 0.03 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 2017.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.565, add alphabetically the commodity ''Banana'' to the table in paragraph (a) and revise footnote 1 to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Banana [1]	0.03
* * * * *	

[1] There are no U.S. registrations for these commodities as of February 15, 2017.

* * * * *

[FR Doc. 2017–03075 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. CDC–2016–0068]

42 CFR Parts 70 and 71

RIN 0920–AA63

Control of Communicable Diseases; Delay of Effective Date

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final rule; delay of effective date.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces a change in the effective date of the final rule titled ''Control of Communicable Diseases'' that was published on January 19, 2017. This action is undertaken in accordance with the memorandum of January 20,

2017 from the Assistant to the President and Chief of Staff entitled ''Regulatory Freeze Pending Review.''

DATES: The effective date of the final rule amending 42 CFR parts 70 and 71 published January 19, 2017 (82 FR 6890) is delayed to March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Martin S. Cetron, M.D., Director, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–03, Atlanta, Georgia, 30329. Phone: (404) 498–1600. Email: *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION: On January 19, 2017, HHS/CDC published a final rule titled ''Control of Communicable Diseases'' (82 FR 6890) with an effective date of February 21, 2017. With this document, HHS/CDC announces a new effective date for this final rule of March 21, 2017.

HHS/CDC bases this action on the Presidential directive expressed in the memorandum of January 20, 2017 from the Assistant to the President and Chief of Staff entitled ''Regulatory Freeze Pending Review.'' This memorandum directed the heads of Executive Departments and Agencies to temporarily postpone for sixty days from the date of the memorandum the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect.

Dated: February 9, 2017.

Norris Cochran,

Acting Secretary, Department of Health and Human Services.

[FR Doc. 2017–03042 Filed 2–14–17; 8:45 am]

BILLING CODE 4163–18–P

FEDERAL MARITIME COMMISSION

46 CFR Part 506

[Docket No. 17–01]

RIN 3072–4C67

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission is publishing its adjustments to inflation annually, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act). The 2015 Act requires that agencies adjust and publish their civil penalties by January 15th each year.

DATES: This rule is effective on February 15, 2017, and is applicable beginning January 15, 2017.

FOR FURTHER INFORMATION CONTACT: Tyler Wood, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Room 1018, Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: This rule adjusts the civil monetary penalties assessable by the Commission in accordance with the 2015 Act, which became effective on November 2, 2015. The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note), in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to adjust CMPs under their jurisdiction by January 15, 2017, based on changes in the consumer price index (CPI–U) using data from October in the previous calendar year. On December 16, 2016, Office of Management and Budget published guidance stating that the CPI–U multiplier for October 2016 is 1.01636.[1] In order to complete the adjustment for January 2017, agencies must multiply the most recent civil penalty amounts in 46 CFR part 506, *i.e.,* those that include the catch-up adjustment required by the 2015 Act by 1.01636.[2] For the Commission, this means applying the multiplier to the penalty amounts set forth in the Commission's June 30, 2016 interim final rule, which went into effect on August 1, 2016.[3]

Rulemaking Analyses and Notices

Notice and Effective Date

Adjustments under the FCPIAA, as amended by the 2015 Act, are not subject to the procedural rulemaking requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553), including the requirements for prior notice, an opportunity for comment, and a delay between the issuance of a final rule and its effective date.[4] As noted above, the 2015 Act requires that the Commission adjust its CMPs no later than January 15 of each year.

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. As indicated above, this final rule is not subject to the APA's notice and comment requirements, and the Commission is not required to prepare an FRFA in conjunction with this final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Penalties.

For the reasons stated in the preamble, Part 506 of title 46 of the Code of Federal Regulations is amended as follows:

[1] Office of Management and Budget, M–17–11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 1 (Dec. 16, 2016) (M–17–11).

[2] *Id.* at 2–3.

[3] 81 FR 42552.

[4] FCPIAA § 4(b)(2); M–17–11 at 2.

PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 506 continues to read as follows:

Authority: 28 U.S.C. 2461.

■ 2. Amend § 506.4 by revising paragraph (d) to read as follows:

§ 506.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States code citation	Civil monetary penalty description	Maximum penalty amount prior to January 15, 2017	Maximum penalty as of January 15, 2017
46 U.S.C. 42304	Adverse impact on U.S. carriers by foreign shipping practices	1,978,690	2,011,061
46 U.S.C. 41107(a)	Knowing and Willful violation/Shipping Act of 1984, or Commission regulation or order.	56,467	57,391
46 U.S.C. 41107(b)	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful.	11,293	11,478
46 U.S.C. 41108(b)	Operating in foreign commerce after tariff suspension	112,934	114,782
46 U.S.C. 42104	Failure to provide required reports, etc./Merchant Marine Act of 1920	8,908	9,054
46 U.S.C. 42106	Adverse shipping conditions/Merchant Marine Act of 1920	1,781,560	1,810,706
46 U.S.C. 42108	Operating after tariff or service contract suspension/Merchant Marine Act of 1920.	89,078	90,535
46 U.S.C. 44102	Failure to establish financial responsibility for non-performance of transportation.	22,500 750	22,868 762
46 U.S.C. 44103	Failure to establish financial responsibility for death or injury	22,500 750	22,868 762
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act/makes false claim	10,781	10,957
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	10,781	10,957

By the Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–00271 Filed 2–14–17; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 82, No. 30
Wednesday, February 15, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9573; Directorate Identifier 2016–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2015–23–13, for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2015–23–13 currently requires modification of the pin programming of the flight warning computer (FWC) to activate the stop rudder input warning (SRIW) logic; and an inspection to determine the part numbers of the FWC and the flight augmentation computer (FAC), and replacement of the FWC and FAC if necessary. Since we issued AD 2015–23–13, we have determined that, for certain airplanes, additional modification instructions must be accomplished to allow installation of the minimum FWC and FAC configuration compatible with SRIW activation. This proposed AD would, for certain airplanes, also require accomplishment of additional modification instructions to install the minimum FWC and FAC configuration compatible with SRIW activation. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 3, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9573; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9573; Directorate Identifier 2016–NM–149–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On November 9, 2015, we issued AD 2015–23–13, Amendment 39–18330 (80 FR 73099, November 24, 2015) (''AD 2015–23–13''), for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2015–23–13 was prompted by a determination that, in specific flight conditions, the allowable load limits on the vertical tail plane could be reached and possibly exceeded. Exceeding allowable load limits could result in detachment of the vertical tail plane. AD 2015–23–13 requires modification of the pin programming of the FWC to activate the SRIW logic; an inspection to determine the part numbers of the FWC and the FAC, and replacement of the FWC and FAC if necessary. We issued AD 2015–23–13 to prevent detachment of the vertical tail plane and consequent loss of control of the airplane.

Since we issued AD 2015–23–13, we have determined that, for certain airplanes, additional modification instructions must be accomplished to allow installation of the minimum FWC and FAC configuration compatible with SRIW activation.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0132, dated July 5, 2016; corrected July 20, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> During design reviews that were conducted following safety recommendations related to in-service incidents and one accident on another aircraft type, it has been determined that, in specific flight conditions, the allowable load limits on the vertical tail

plane could be reached and possibly exceeded.

This condition, if not corrected, could lead to in-flight detachment of the vertical tail plane, possibly resulting in loss of control of the aeroplane.

To address this unsafe condition, Airbus developed modifications within the flight augmentation computer (FAC) to reduce the vertical tail plane stress and to activate a conditional aural warning within the flight warning computer (FWC) to further protect against pilot induced rudder doublets.

Consequently, EASA issued AD 2014–0217 (later revised) [which corresponds to FAA AD 2015–23–13] to require installation and activation of the stop rudder input warning (SRIW) logic. In addition, that [EASA] AD required upgrades of the FAC and FWC, to introduce the SRIW logic and SRIW aural capability, respectively. After modification, the [EASA] AD prohibited (re)installation of certain Part Number (P/N) FWC and FAC.

Since EASA AD 2014–0217R1 was issued, Airbus made available additional modification instructions that, for certain aeroplanes, must be accomplished to allow installation of the minimum FWC and FAC configuration compatible with SRIW activation.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0217R1, which is superseded, and includes reference to modification instructions, which must be accomplished on certain aeroplanes.

This [EASA] AD is republished to remove a typographical error in Appendix 1 [of the EASA AD].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9573.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015. This service information describes procedures for modifying the pin programming to activate the SRIW logic.

Airbus has also issued the following service information. The service information describes procedures for replacing FWCs and FACs. These documents are distinct since they apply to different airplane configurations and software packages.

- Airbus Service Bulletin A320–22–1375, dated January 15, 2014.
- Airbus Service Bulletin A320–22–1427, Revision 05, including Appendix 01, dated November 24, 2014.
- Airbus Service Bulletin A320–22–1447, Revision 03, dated April 21, 2015.
- Airbus Service Bulletin A320–22–1454, dated February 12, 2014.
- Airbus Service Bulletin A320–22–1461, Revision 07, including Appendix 01, dated March 23, 2015.
- Airbus Service Bulletin A320–22–1502, dated November 14, 2014.
- Airbus Service Bulletin A320–22–1539, Revision 01, dated February 24, 2016.
- Airbus Service Bulletin A320–22–1553, dated March 21, 2016.
- Airbus Service Bulletin A320–22–1554, dated April 19, 2016.
- Airbus Service Bulletin A320–31–1414, Revision 03, dated September 15, 2014.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 1,032 airplanes of U.S. registry.

The actions required by AD 2015–23–13, and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2015–23–13 is $255 per product.

We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $263,160, or $255 per product.

In addition, we estimate that any necessary follow-on actions will take about 6 work-hours (3 work-hours for an FWC and 3 work-hours for an FAC), and require parts costing $88,000 (FAC), for a cost of $88,510 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–23–13, Amendment 39–18330 (80 FR 73099, November 24, 2015), and adding the following new AD:

Airbus: Docket No. FAA–2016–9573; Directorate Identifier 2016–NM–149–AD.

(a) Comments Due Date

We must receive comments by April 3, 2017.

(b) Affected ADs

This AD replaces AD 2015–23–13, Amendment 39–18330 (80 FR 73099, November 24, 2015) (''AD 2015–23–13'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto Flight; 31, Instruments.

(e) Reason

This AD was prompted by a determination that, in specific flight conditions, the allowable load limits on the vertical tail plane could be reached and possibly exceeded. Exceeding allowable load limits could result in detachment of the vertical tail plane. We are issuing this AD to prevent detachment of the vertical tail plane and consequent loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Pin Programming Modification, With New Service Information

This paragraph restates the requirements of paragraph (g) of AD 2015–23–13, with new service information. Within 48 months after December 29, 2015 (the effective date of AD 2015–23–13), modify the pin programming to activate the stop rudder input warning (SRIW) logic, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–22–1480, Revision 02, dated March 30, 2015; or Airbus Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015. As of the effective date of this AD, use only Airbus Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015.

(h) Retained Inspection To Determine Part Numbers (P/Ns), Flight Warning Computer (FWC) and Flight Augmentation Computer (FAC) Replacement, With New Replacement Part Numbers

This paragraph restates the requirements of paragraph (h) of AD 2015–23–13, with new replacement part numbers. Prior to or concurrently with the actions required by paragraph (g) of this AD: Inspect the part numbers of the FWC and the FAC installed on the airplane. If any FWC or FAC having a part number identified in paragraph (h)(1) or (h)(2) of this AD, as applicable, is installed on an airplane, prior to or concurrently with the actions required by paragraph (g) of this AD, replace all affected FWCs and FACs with a unit having a part number identified in figure 1 to paragraph (h)(3) of this AD, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraph (i) of this AD. As of the effective date of this AD, use only figure 1 to paragraph (h)(3) of this AD to identify the replacement part numbers.

(1) Paragraphs (h)(1)(i) through (h)(1)(xvii) of this AD identify FWCs having part numbers that are non-compatible with the SRIW activation required by paragraph (g) of this AD.

(i) 350E017238484 (H1–D1).
(ii) 350E053020303 (H2–E3).
(iii) 350E016187171 (C5).
(iv) 350E053020404 (H2–E4).
(v) 350E017248685 (H1–D2).
(vi) 350E053020606 (H2–F2).
(vii) 350E017251414 (H1–E1).
(viii) 350E053020707 (H2–F3).
(ix) 350E017271616 (H1–E2).
(x) 350E053021010 (H2–F3P).
(xi) 350E018291818 (H1–E3CJ).
(xii) 350E053020808 (H2–F4).
(xiii) 350E018301919 (H1–E3P).
(xiv) 350E053020909 (H2–F5).
(xv) 350E018312020 (H1–E3Q).
(xvi) 350E053021111 (H2–F6).
(xvii) 350E053020202 (H2–E2).

(2) Paragraphs (h)(2)(i) through (h)(2)(xxxiv) of this AD identify FACs having part numbers that are non-compatible with the SRIW activation required by paragraph (g) of this AD.

(i) B397AAM0202.
(ii) B397BAM0101.
(iii) B397BAM0512.
(iv) B397AAM0301.
(v) B397BAM0202.
(vi) B397BAM0513.
(vii) B397AAM0302.
(viii) B397BAM0203.
(ix) B397BAM0514.
(x) B397AAM0303.
(xi) B397BAM0305.
(xii) B397BAM0515.
(xiii) B397AAM0404.
(xiv) B397BAM0406.
(xv) B397BAM0616.
(xvi) B397AAM0405.
(xvii) B397BAM0407.
(xviii) B397BAM0617.
(xix) B397AAM0506.
(xx) B397BAM0507.
(xxi) B397BAM0618.
(xxii) B397AAM0507.
(xxiii) B397BAM0508.
(xxiv) B397BAM0619.
(xxv) B397AAM0508.
(xxvi) B397BAM0509.
(xxvii) B397BAM0620.
(xxviii) B397AAM0509.
(xxix) B397BAM0510.
(xxx) B397CAM0101.
(xxxi) B397AAM0510.
(xxxii) B397BAM0511.
(xxxiii) B397CAM0102.
(xxxiv) Soft P/N G2856AAA01 installed on hard P/N C13206AA00.

(3) As of the effective date of this AD, figure 1 to paragraph (h)(3) of this AD identifies the FACs and FWCs having the part numbers that are compatible with SRIW activation required by paragraph (g) of this AD.

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Figure 1 to Paragraph (h)(3) of this AD - *FWC and FAC installation compatible with activation of SRIW*

	Aeroplane Configuration						
	A318	A319		A320		A321	
	Without Sharklet	Without Sharklet	With Sharklet	Without Sharklet	With Sharklet	Without Sharklet	With Sharklet
FAC P/N B397BAM0621 (621 hard B)	CFM	X	NC	X	NC	X	NC
FAC P/N B397BAM0622 (622 hard B)	CFM	X	CFM	NC	X	X	NC
FAC P/N B397BAM0623 (623 hard B)	CFM	X	X	X	X	X	X
FAC P/N B397BAM0624 (624 hard B)	X	X	X	X	X	X	X
FAC soft P/N G2856AAA02 installed on hard P/N C13206AA00 (CAA02 hard C)	CFM	X	X	X	X	X	X
FAC soft P/N G2856AAA03 installed on hard P/N C13206AA00 (CAA03 hard C)	X	X	X	X	X	X	X
FAC soft P/N G2856AAA04 installed on hard P/N C13206AA00 (CAA04 hard C)	X	X	X	X	X	X	X
FWC P/N 350E053021212 (H2-F7)	X	X	X	X	X	X	X
FWC P/N 350E053021313 (H2-F8P)	X	X	X	X	X	X	X
FWC P/N 350E053021414 (H2-F8)	X	X	X	X	X	X	X

'X' mean that the FAC / FWC is compatible with any engine installation for that aeroplane model.

'CFM' mean that the FAC / FWC is compatible with CFM engine installation for that aeroplane model.

'NC' mean that the FAC / FWC is not compatible with that aeroplane configuration.

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(i) Retained Service Information for Actions Required by Paragraph (h) of This AD, With New Service Information

This paragraph restates the requirements of paragraph (i) of AD 2015–23–13, with new service information. Do the actions required by paragraph (h) of this AD in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (i)(1) through (i)(10) of this AD.

(1) Airbus Service Bulletin A320–22–1375, dated January 15, 2014 (FAC 621 hard B).

(2) Airbus Service Bulletin A320–22–1427, Revision 05, including Appendix 01, dated November 24, 2014 (FAC 622 hard B).

(3) Airbus Service Bulletin A320–22–1447, Revision 03, dated April 21, 2015 (FAC CAA02 hard C).

(4) Airbus Service Bulletin A320–22–1454, dated February 12, 2014 (FAC CAA02).

(5) Airbus Service Bulletin A320–22–1461, Revision 07, including Appendix 01, dated March 23, 2015 (FAC 623 hard B).

(6) Airbus Service Bulletin A320–22–1502, dated November 14, 2014 (FAC CAA02).

(7) Airbus Service Bulletin A320–22–1539, Revision 01, dated February 24, 2016 (FAC CAA03).

(8) Airbus Service Bulletin A320–22–1553, dated March 21, 2016 (FAC B624).

(9) Airbus Service Bulletin A320–22–1554, dated April 19, 2016 (FAC CAA03).

(10) Airbus Service Bulletin A320–31–1414, Revision 03, dated September 15, 2014 (FWC H–F7).

(j) Retained Exclusion From Actions Required by Paragraphs (g) and (h) of This AD, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2015–23–13, with no changes. An airplane on which Airbus Modification 154473 has been embodied in production is excluded from the requirements of paragraphs (g) and (h) of this AD, provided that within 30 days after December 29, 2015 (the effective date of AD 2015–23–13), an inspection of the part numbers of the FWC and the FAC installed on the airplane is done to determine that no FWC having a part number listed in paragraph (h)(1) of this AD, and no FAC having a part number listed in paragraph (h)(2) of this AD, has been installed on that airplane since date of manufacture. A review of airplane maintenance records is acceptable

in lieu of this inspection if the part numbers of the FWC and FAC can be conclusively determined from that review. If any FWC or FAC having a part number identified in paragraph (h)(1) or (h)(2) of this AD, as applicable, is installed on a post Airbus Modification 154473 airplane: Within 30 days after December 29, 2015, do the replacement required by paragraph (h) of this AD.

(k) Retained Parts Installation Prohibitions, With New Requirements

This paragraph restates the parts installation prohibitions specified in paragraph (k) of AD 2015–23–13, with new requirements.

(1) After modification of an airplane as required by paragraphs (g), (h), or (j) of this AD: Do not install on that airplane any FWC having a part number listed in paragraph (h)(1) of this AD or any FAC having a part number listed in paragraph (h)(2) of this AD.

(2) For an airplane that does not have a FWC having a part number listed in paragraph (h)(1) of this AD and does not have a FAC having a part number listed in paragraph (h)(2) of this AD: As of the effective date of this AD, do not install a FWC having a part number listed in paragraph (h)(1) of this AD or a FAC having a part number listed in paragraph (h)(2) of this AD.

(l) Retained Later Approved Parts, With a Different Effective Date

This paragraph restates the requirements of paragraph (l) of AD 2015–23–13, with a different effective date. Installation of a version (part number) of the FWC or FAC approved after March 5, 2015 (the effective date of European Aviation Safety Agency (EASA) AD 2014–0217R1), is an approved method of compliance with the requirements of paragraph (h) or (j) of this AD, provided the requirements specified in paragraphs (l)(1) and (l)(2) of this AD are met.

(1) The version (part number) must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA).

(2) The installation must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(m) Credit for Previous Actions

(1) This paragraph restates the credit provided by paragraph (m)(1) of AD 2015–23–13. This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before December 29, 2015 (the effective date of AD 2015–23–13) using the service information specified in paragraphs (m)(1)(i) or (m)(1)(ii) of this AD.

(i) Airbus Service Bulletin A320–22–1480, dated July 9, 2014.

(ii) Airbus Service Bulletin A320–22–1480, Revision 01, dated February 6, 2015.

(2) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–22–1480, Revision 02, dated March 30, 2015.

(3) This paragraph restates the credit provided by paragraph (m)(2) of AD 2015–23–13. This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before December 29, 2015 (the effective date of AD 2015–23–13) using the applicable Airbus service information identified in paragraphs (m)(3)(i) through (m)(3)(xviii) of this AD.

(i) Airbus Service Bulletin A320–22–1427, dated January 25, 2013.

(ii) Airbus Service Bulletin A320–22–1427, Revision 01, dated July 30, 2013.

(iii) Airbus Service Bulletin A320–22–1427, Revision 02, dated October 14, 2013.

(iv) Airbus Service Bulletin A320–22–1427, Revision 03, dated November 8, 2013.

(v) Airbus Service Bulletin A320–22–1427, Revision 04, dated February 11, 2014.

(vi) Airbus Service Bulletin A320–22–1447, dated October 18, 2013.

(vii) Airbus Service Bulletin A320–22–1447, Revision 01, dated September 18, 2014.

(viii) Airbus Service Bulletin A320–22–1447, Revision 02, dated December 2, 2014.

(ix) Airbus Service Bulletin A320–22–1461, dated October 31, 2013.

(x) Airbus Service Bulletin A320–22–1461, Revision 01, dated February 25, 2014.

(xi) Airbus Service Bulletin A320–22–1461, Revision 02, dated April 30, 2014.

(xii) Airbus Service Bulletin A320–22–1461, Revision 03, dated July 17, 2014.

(xiii) Airbus Service Bulletin A320–22–1461, Revision 04, dated September 15, 2014.

(xiv) Airbus Service Bulletin A320–22–1461, Revision 05, dated November 13, 2014.

(xv) Airbus Service Bulletin A320–22–1461, Revision 06, dated January 21, 2015.

(xvi) Airbus Service Bulletin A320–31–1414, dated December 19, 2012.

(xvii) Airbus Service Bulletin A320–31–1414, Revision 01, dated March 21, 2013.

(xviii) Airbus Service Bulletin A320–31–1414, Revision 02, dated July 30, 2013.

(4) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–22–1539, dated December 28, 2015.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs approved previously for 2015–23–13, are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0132, dated July 5, 2016; corrected July 20, 2016; for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9573.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 27, 2017.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–02662 Filed 2–14–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2016–0596; FRL–9959–28–OAR]

RIN 2060–AT22

Response to December 9, 2013, Clean Air Act Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that a public hearing will be held for the proposed action titled, ''Response to December 9, 2013, Clean Air Act Section 176A Petition from Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont,'' which published in the **Federal Register** on January 19, 2017. The hearing will be held on March 14, 2017, in Washington, DC. The EPA is also announcing extension of the comment period for the proposed action to April 13, 2017, to allow sufficient time after the public hearing for the submission of comments.

DATES: *Public Hearing.* The public hearing will be held on March 14, 2017, in Washington, DC. Please refer to **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

Comments. Comments must be received on or before April 13, 2017.

ADDRESSES: *Public Hearing.* The March 14, 2017, public hearing will be held at the EPA, William Jefferson Clinton East Building, Room 1117A, 1201 Constitution Avenue NW., Washington, DC 20004. Identification is required. If your driver's license is issued by Kentucky, Maine, Minnesota, Missouri, Montana, Oklahoma, Pennsylvania, South Carolina or the state of Washington, you must present an additional form of identification to enter (*see* **SUPPLEMENTARY INFORMATION** section for additional information on this location).

Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0596, at: *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/comments.html*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA Docket Center Reading Room, William Jefferson Clinton West Building, located at 1301 Constitution Avenue NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (OAQPS), Air Quality Planning Division (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address *long.pam@epa.gov,* no later than March 10, 2017. If you have any questions relating to the public hearing, please contact Ms. Long at the above number.

If you have questions concerning the January 19, 2017, proposed action, please contact Ms. Gobeail McKinley, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (OAQPS), Air Quality Planning Division (C539–01), Research Triangle Park, NC 27711, telephone (919) 541–5246, email address *mckinley.gobeail@epa.gov*.

SUPPLEMENTARY INFORMATION: The proposal for which the EPA is holding the public hearing was published in the **Federal Register** on January 19, 2017 (82 FR 6509), and is available at: *http://www.epa.gov/ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-section-176a-petitions* and also in Docket ID No. EPA–HQ–OAR–2016–0596. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to presentations at that time. Written statements and supporting information that are submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked by the last day of the comment period.

The public hearing will convene at 9:00 a.m. and end at 6:00 p.m. Eastern Time (ET) or at least two hours after the last registered speaker has spoken. The EPA will make every effort to accommodate all individuals interested in providing oral testimony. A lunch break is scheduled from 12:00 p.m. until 1:00 p.m. Please note that this hearing will be held at a U.S. government facility. Individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. The REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect on July 21, 2014. If your driver's license is issued by Kentucky, Maine, Minnesota, Missouri, Montana, Oklahoma, Pennsylvania, South Carolina or the state of Washington, you must present an additional form of identification to enter the federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. For additional information for the status of your state regarding REAL ID, go to *http://www.dhs.gov/real-id-enforcement-brief*. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building,

and demonstrations will not be allowed on federal property for security reasons.

If you would like to present oral testimony at the hearing, please notify Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (OAQPS), Air Quality Planning Division (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address *long.pam@epa.gov,* no later than 4:00 p.m. ET on March 10, 2017. Ms. Long will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing.

Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Ms. Long if they will need specific equipment. Commenters should also notify Ms. Long if they need specific translation services for non-English speaking commenters.

Prior to the hearing, the hearing schedule, including the list of speakers, will be posted on the EPA's Web site at: *http://www.epa.gov/ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-section-176a-petitions.* Verbatim transcripts of the hearing and written statements will be included in the docket for the action.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed action ''Response to December 9, 2013, Clean Air Act Section 176A Petition from Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont'' under Docket ID No. EPA–HQ–OAR–2016–0596 (available at: *http://www.regulations.gov*). The EPA has made available information related to the proposed action on the EPA's Web site at: *http://www.epa.gov/ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-section-176a-petitions.*

Dated: February 9, 2017.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2017–03041 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0781; FRL–9959–27–Region 5]

Air Plan Approval; Ohio; Removal of Gasoline Volatility Requirements in the Cincinnati and Dayton Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Ohio Environmental Protection Agency (Ohio EPA) on December 19, 2016, concerning the state's gasoline volatility standards in the Cincinnati and Dayton areas. The revision removes the 7.8 pounds per square inch (psi) low Reid Vapor Pressure (RVP) fuel requirements for the two areas as a component of the Ohio ozone SIP. The submittal also includes a section 110(l) demonstration as required by the Clean Air Act (CAA) that addresses emission impacts associated with the removal of the program.

DATES: Comments must be received on or before March 17, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0781 at *http://www.regulations.gov,* or via email to *blakley.pamela@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

Under section 211(c) of the CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected; which is during the summertime. These regulations constituted Phase I of a two phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the high ozone season. Depending on the state and month, gasoline RVP was not to exceed 10.5 psi, 9.5 psi, or 9.0 psi. Phase I was applicable to calendar years 1989 through 1991. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone national ambient air quality standards (NAAQS)). Phase II is applicable to 1992 and subsequent years.

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h)(1) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h)(2) prohibits EPA from establishing a volatility standard more

stringent than 9.0 psi in an attainment area, except that the Agency may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to make them consistent with section 211(h). The modified regulations prohibited the sale of gasoline, beginning in 1992, with an RVP above 9.0 psi in all areas designated attainment for ozone. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. Under such requirements, the state of Ohio was required to meet a 9.0 psi RVP standard during the summer control period.

On April 15, 2004, the EPA designated 5 counties in the Cincinnati, Ohio area (Hamilton, Butler, Clinton, Warren and Clermont) and 4 counties in the Dayton, Ohio area (Clark, Greene, Miami, and Montgomery) as nonattainment for the 8-hour ozone standard. As part of Ohio's efforts to bring these areas into attainment of the ozone standard, the state adopted and implemented a broad range of ozone control measures for the areas including the implementation of a 7.8 psi RVP fuel program that was more stringent than the federal 9.0 psi RVP requirement. The Ohio EPA originally submitted a SIP revision to EPA on February 14, 2006 and October 6, 2006, for the purpose of establishing a gasoline RVP limit of 7.8 psi for gasoline sold in the Cincinnati and Dayton areas. The revision specifically applied to Butler, Clermont, Hamilton and Warren counties (Cincinnati area), and Clark, Greene, Miami and Montgomery counties (Dayton area) in Ohio. EPA approved Ohio's 7.8 psi RVP program on May 25, 2007 (72 FR 29269), including the program's legal authority and administrative requirements found in the Ohio Administrative Code (OAC) rules 3745–72–1 to 8.

II. What changes have been made to the Ohio's gasoline volatility standards?

On December 19, 2016, the Ohio EPA submitted a SIP revision requesting that EPA approve the removal of the 7.8 psi RVP fuel requirements under OAC 3745–72–1 to 8 from the Ohio ozone SIP before the beginning of the 2017 ozone control period.

To support the removal of the 7.8 psi RVP fuel program requirements from the SIP, the revision included amendments of OAC 3745–72–01 (Applicability), as effective on August 1, 2016; a summary of the Ohio-specific analyses using EPA's Motor Vehicle Emissions Simulator (MOVES) model to quantify the emissions impact associated with removing the 7.8 psi RVP fuel program in Cincinnati and Dayton; and a section 110(l) demonstration that includes offset emissions documentation.

III. What is EPA's analysis of the State's submittal?

EPA's primary consideration for determining the approvability of Ohio's request is whether this requested action complies with section 110(l) of the CAA.[1]

Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which EPA has not yet made designations. The degree of the analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision.

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions in the air are not increased. ''Equivalent'' emission reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emission reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

In its December 19, 2016 SIP revision, the Ohio EPA includes a 110(l) demonstration that uses equivalent emission reductions to compensate for emission reduction losses resulting from the removal of the SIP approved 7.8 psi RVP fuel requirements in the Cincinnati and Dayton areas in Ohio. More specifically, the emission benefits associated with the 7.8 psi RVP fuel requirements will be substituted with equivalent or greater emissions reductions from facilities in the Cincinnati and Dayton areas which have permanently shut down or which have or will cease coal operations or convert from coal to natural gas due to U.S. EPA's Boiler Maximum Achievable Control Technology (MACT) regulations. These substitute emissions are quantifiable, permanent, surplus (*i.e.,* oxides of nitrogen (NO_X) and volatile organic compound (VOC) emissions reductions are due to permanent shutdowns or are a co-benefit of the chosen compliance strategy for the Boiler MACT regulations), enforceable and contemporaneous (*i.e.,* occurring within approximately one year before/after this demonstration and/or the anticipated cessation of the low RVP fuel program).

To determine the emissions impact of removing the 7.8 psi RVP program requirements in both areas, Ohio EPA used the latest version of EPA's MOVES model to conduct a series of emissions analysis. Ohio EPA's analysis focused on VOC and NO_X emissions because low RVP requirements primarily affect VOC emissions and because VOCs and NO_X are precursors for ground-level ozone formation.

Based on our review of the information provided, EPA finds that Ohio EPA used reasonable methods and the appropriate model in estimating the emissions effect of removing the 7.8 psi RVP fuel requirements. Ohio EPA determined that in 2017 the emissions increase resulting from removing the 7.8 psi RVP requirements would be 15.83 tons per year (tpy) of VOC and 16.33 tpy of NO_X in the Cincinnati area and 16.01 tpy of VOC and 13.93 tpy of NO_X in the Dayton area.

In the Dayton area, a portion of the emission reductions from the low RVP fuel requirements will be substituted with VOC emission reductions from two facilities which permanently shut down in 2016: Miami Valley Publishing Company (Facility ID 0829060354), which permanently shut down on March 29, 2016; and National Oilwell Varco (Facility ID 0812100350), which permanently shut down all sources

[1] CAA section 193 is not relevant because Ohio's Low RVP requirements in Cincinnati and Dayton were not included in the SIP before the 1990 CAA amendments.

except for a soil vapor recovery system on June 30, 2016. Based on actual conservative 2015 emissions from these facilities, Ohio EPA determined that 3.51 tpy of VOC from the Miami Valley Publishing Company facility (Facility ID 0829060354) and 4.86 tpy of VOC from the National Oilwell Varco facility (Facility ID 0812100350) will be permanently retired upon EPA's approval of this SIP revision. After this direct substitution of VOCs, the amount of VOCs reductions needed in the Dayton area is reduced from 16.01 tons to 7.64 tons of VOC. (See Table 1)

For the remaining reductions needed to substitute for the low RVP requirements, Ohio EPA will be substituting NO_X for VOC emissions and using all-NO_X reductions to offset the remaining NO_X and VOC emissions. EPA policy allows for substitution between VOC and NO_X emissions in its guidance on reasonable further progress. This guidance recommends that states assume, as an approximation, that equivalent percent changes in the area's inventory for the respective pollutant yield an equivalent change in ozone levels. For example, decreasing area NO_X emissions by 3 percent would have the same effect as decreasing area VOC emissions by 3 percent. Stated another way, if an area has twice as many tons of NO_X emissions as VOC emissions, then 2 tons of NO_X emissions would be assumed to have the same effect on ozone as 1 ton of VOC emissions. Following this approach, Ohio EPA used a 1 VOC to 1.527 NO_X conversion ratio for the counties currently in the low RVP fuel program in the Cincinnati area and a 1 VOC to 1.021 NO_X conversion ratio for the counties in the Dayton area. The conversion ratios use the most recent inventories available for both areas.

Applying these factors, 40.50 tpy of NO_X reductions will need to be offset by equivalent or greater emission reductions in the Cincinnati area and 21.72 tpy of NO_X reductions will be needed in the Dayton area. (See Table 1)

TABLE 1—EMISSIONS TO BE REPLACED

[Tons per year]

Emissions	Cincinnati area (tpy)	Dayton area (tpy)
NO_X to be replaced from removal of 7.8 low RVP program	16.33	13.93
VOCs to be replaced from removal of 7.8 low RVP program	15.83	16.01
VOCs replaced directly with facility shutdowns	0.00	*8.37
Remaining VOCs to be replaced	15.83	7.64
VOC: NO_X ratio	1:1.527	1:1.021
VOC converted to NO_X	24.17	7.79
Total NO_X emissions to be replaced	40.50	21.72

*VOC emissions reductions from two facilities which permanently shut down in 2016: Miami Valley Publishing Company (Facility ID 0829060354) and National Oilwell Varco (Facility ID 0812100350).

In the Cincinnati area, the 7.8 psi low RVP fuel requirements will be substituted with emission reductions at the MillerCoors LLC facility (Facility ID 1409000353) resulting from the shutdown of coal/gas fired boilers and installation of new natural gas fired boilers due to the Boiler MACT regulations. The relevant emissions units are B001, B002, B010 and B011. B001 and B002 coal/gas boilers were permanently shut down on April 1, 2016. Federally-enforceable permits prior to the shutdown include NO_X emission limits for B001 and B002 of 1,375.9 tpy combined, based on rolling 12-month summations. These were replaced with two new natural gas boilers, B010 and B011, which commenced operation on January 20, 2016. Federally-enforceable permits for the new boilers B010 and B011 include NO_X emission limits of 1.17 tons of NO_X per month over a rolling 12-month period for each boiler. The amount of reductions due to shutdowns/conversion to natural gas was calculated as the difference between historical actual emissions and projected emissions from the new gas boilers. NO_X emission reductions were 175.29 tpy using 5-year historical averages (2011–2015), and 111.00 tpy using most recent 2015 actual data.

As indicated above, 40.50 tpy of NO_X reductions will need to be offset by equivalent or greater emission reductions from the MillerCoors facility. Therefore, Ohio EPA has determined that more than adequate emission reductions from the shutdowns/conversions of B001, B002, B010 and B011 at the MillerCoors facility are available to offset the removal of the low RVP program in Cincinnati.

In the Dayton area, the remaining emission reductions to be replaced will be substituted with emission reductions at the Wright-Patterson Air Force Base (Facility ID 0829700441) facility resulting from shutdowns and conversions from coal to natural gas due to compliance with Boiler MACT regulations. The relevant emission units are B606, B607, and B608. Coal boiler B606 was permanently shut down on June 7, 2016. Coal boilers B607 and B608 will be converted to natural gas by January 31, 2017 due to Boiler MACT. No changes are anticipated for an existing natural gas boiler, B609, which is included in Ohio EPA's analysis only because it is part of the emissions unit group and has combined emission limitations with the converted units (B607 and B608). Federally-enforceable permits prior to the shutdown/conversions include NO_X emission limits of 33.20 tpy from B609, and 350.32 tpy NO_X from each B606, B607 and B608 with total combined NO_X emissions not to exceed 788 tons, as a rolling, 12-month summation from the coal-fired boilers identified as emission units B309, B310, B311, B606, B607, and B608 combined (Note: B309, B310 and B311 underwent similar shutdown/conversions in 2015 with B311 shutdown and B309 and B310 converted to natural gas). Federally-enforceable permits following the shutdown/conversions include NO_X emission limits of 120 tpy combined for B607, B608 and B609.

The amount of reductions due to shutdown/conversion to natural gas was calculated as the difference between historical actual emissions and projected emissions from the converted coal boilers. NO_X emission reductions were 64.97 tpy using 5-year historical averages (2011–2015), and 46.27 tpy using most recent 2015 actual data.

As indicated above, 21.72 tpy of NO_X reductions remain to be offset by equivalent or greater emissions reductions from the Wright-Patterson Air Force Base facility. Therefore, Ohio EPA has determined that more than adequate emission reductions from the

shutdown/conversions of B606, B607 and B608 at Wright-Patterson Air Force Base are available to offset the removal of the low RVP program in Dayton.

These substitute emissions from both MillerCoors and Wright-Patterson Air Force Base facilities are from permanent and enforceable shutdowns and conversions to natural gas. It should be noted that a facility which has notified Ohio EPA of a permanent shut down cannot resume operations without being considered a new facility and being subject to the new source review (NSR) requirements. Further, these conversions to natural gas were undertaken as the facility's chosen option to comply with Boiler MACT regulations. Conversion back to coal would be impractical, if not impossible, as the facility would still be required to comply with Boiler MACT regulations. In addition, the units are no longer permitted to burn coal and should the facility desire to burn coal again, the units would have to undergo NSR and these retired credits would not be available to the facility (or any other facility) for netting or offset purposes in the future.

The Boiler MACT regulations established emission standards for control of mercury, hydrogen chloride, particulate matter (as a surrogate for non-mercury metals), and carbon monoxide (as a surrogate for organic hazardous emissions) from coal-fired, biomass-fired, and liquid-fired major source boilers based on the maximum achievable control technology. The boiler MACT standards will also result in NO_X reductions as a co-benefit of the controls installed to meet the standards. These facilities' operating permits include NO_X limits which reflect those co-benefits, and as such the NO_X reductions are surplus to what would otherwise be required.

These reductions are also surplus in that they were not previously relied on for credit toward attainment or maintenance purposes. Ohio EPA will ensure these reductions are permanently retired and cannot be relied on for future CAA requirements. Ohio EPA maintains a database of all reductions used for the purpose of CAA 110(l) demonstrations to ensure they cannot be used again. These reductions will be entered into and tracked within this database.

As demonstrated above, Ohio EPA has calculated that more than adequate surplus emission reductions are available to offset the cessation of the low RVP fuel requirements in the Cincinnati and Dayton areas. Based on Ohio EPA's calculations, the emissions increase in the Cincinnati area due to cessation of the low RVP program is 16.33 tpy NO_X and 15.83 tpy VOC (equivalent to 40.50 tpy NO_X after VOC to NO_X substitution). This amount is more than offset by the 111.0 tpy NO_X potentially available from the MillerCoors facility. Likewise, the emissions increase in the Dayton area due to cessation of the low RVP program is 13.93 tpy NO_X and 16.01 tpy VOC. This amount is more than offset by the 3.51 tpy of VOC from the Miami Valley Publishing Company facility, 4.86 tpy of VOC from the National Oilwell Varco facility, and 46.27 tpy NO_X (depending on the calculation method) potentially available from the Wright-Patterson Air Force Base facility. (See Table 2)

Ohio EPA is not permanently retiring all of the available emission reductions but only those to offset removal of the 7.8 psi RVP fuel requirements as outlined in this action. Upon approval of this SIP revision, 3.51 tpy of VOC from the Miami Valley Publishing Company facility, 4.86 tpy of VOC from the National Oilwell Varco facility, 40.50 tpy of NO_X from the MillerCoors LLC facility and 21.72 tpy of NO_X from the Wright-Patterson Air Force Base facility will be permanently retired. Any use of additional reductions in excess of those being retired under this action that may be used in the future will be evaluated for the surplus criteria at the time of use, which will include discounting what is retired under this action.

TABLE 2—SUMMARY OF AVAILABLE OFFSETS AND NO_X EMISSIONS TO BE RETIRED

Emissions	Cincinnati area (tpy)	Dayton area (tpy)
NO_X to be replaced from removal of 7.8 low RVP program	16.33	13.93
VOCs to be replaced from removal of 7.8 low RVP program	15.83	16.01
VOCs replaced directly with facility shutdowns	0.00	8.37
Total NO_X emissions to be replaced (after conversion of remaining VOC to NO_X)	40.50	21.72
NO_X offsets available from shutdowns/conversion to natural gas	111.00	46.27
Excess NO_X credits (available offsets minus emissions to be replaced)	70.50	24.55
VOC emissions to be retired	0.00	8.37
NO_X emissions to be retired	40.50	21.72

Based on an evaluation of Ohio EPA's 110(l) demonstration, EPA believes that the removal of the 7.8 psi low RVP fuel program requirements in the Cincinnati and Dayton areas do not interfere with Ohio's ability to demonstrate compliance with the 8-hour ozone NAAQS in both areas. This is based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved from facilities in the Cincinnati and Dayton areas that have permanently shut down or which have or will convert from coal to natural gas as previously discussed.

EPA also examined whether the removal of 7.8 psi low RVP fuel program requirements in both areas will interfere with attainment of other air quality standards. All the counties in the Dayton area are designated attainment for all standards, including sulfur dioxide and nitrogen dioxide. Cincinnati is designated attainment for all standards other than ozone, sulfur dioxide and fine particulate matter ($PM_{2.5}$). Although NO_X and VOCs also contribute to the formation of particulate matter, the extent of the contribution varies significantly by location or region within the U.S.[2]

[2] While VOC is one of the precursors for $PM_{2.5}$ formation, a study (Journal of Environmental Engineering—Qualifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States, June 24, 2009, available at: *http://www.journals.elsevier.com/journal-ofenvironmental-management*) indicates that in portions of the Midwest (including portions of Ohio where low RVP fuel requirements have been implemented), emissions of direct $PM_{2.5}$ and the precursor sulfur dioxide ($S0_2$) are more significant to ambient $PM_{2.5}$ concentrations than NO_X and VOC. Specifically, $PM_{2.5}$ sensitivities to anthropogenic VOC emissions are near zero for the entire region, including the Cincinnati region. This study also indicated that the impact of SO_2 emissions, especially from electric generating units, was most significant in the Cincinnati area due to SO_2 emissions in the entire mid-west region (Wisconsin, Illinois, Indiana, Michigan and Ohio). In fact, emissions from the mid-west had the largest effect on $PM_{2.5}$ sensitivities in the Cincinnati region. For this reason, a similar impact is expected in the Dayton area. The technical analysis provided by

However, as with ozone, any NO_X and VOC emission increases resulting from the removal of the low RVP fuel requirements are being offset through the use of equivalent emission reductions as discussed above. Based on Ohio EPA's 110(l) analysis, EPA has no reason to believe that the removal of the low RVP fuel requirements in Cincinnati and Dayton will cause the areas to become nonattainment for any of these pollutants. In addition, EPA believes that removing the 7.8 psi low RVP program requirements in Ohio will not interfere with the areas' ability to meet any other CAA requirement.

Based on the above discussion and the state's section 110(l) demonstration, EPA believes that removal of the 7.8 psi low RVP fuel requirements would not interfere with attainment or maintenance of any of the NAAQS in the Cincinnati and Dayton areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l).

IV. What action is EPA proposing to take?

EPA is proposing to approve the revision to the Ohio ozone SIP submitted by the Ohio EPA on December 19, 2016, removing the 7.8 psi RVP fuel requirements for gasoline distributed in the Cincinnati and Dayton areas which include Montgomery, Miami, Greene, Clark, Hamilton, Butler, Warren, and Clermont counties. We find that the revision meets all applicable requirements and it would not interfere with reasonable further progress or attainment of any of the NAAQS.

V. Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required EPA in consultation with the U.S. Department of Energy to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2008 EPA published the list of boutique fuels. (See 71 FR 78192.) EPA maintains the current list of boutique fuels on its Web site at: *https://www.epa.gov/gasoline-standards/state-fuels.* The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all SIPs in which it was approved in order for it to be removed from the list. (See 71 FR 78195.)

A. Removal of Gasoline Volatility Requirements in Cincinnati and Dayton

The 7.8 psi RVP fuel program, which is approved into Ohio's SIP, is a fuel type that is included in EPA's boutique fuel list, 71 FR 78198–99; (*https://www.epa.gov/gasoline-standards/state-fuels*) and the specific counties in the Cincinnati and Dayton areas where the low RVP gasoline is required are identified on EPA's Gasoline Reid Vapor Pressure Web page (*https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure*). If the proposed removal of Ohio's gasoline volatility requirements from the state's SIP is approved, EPA will update the State Fuels and Gasoline Reid Vapor Pressure Web pages on the effective date of the removal. While the entry for Ohio will be deleted from the list of boutique fuels, this deletion will not result in an opening on the boutique fuels list because the 7.8 psi RVP fuel type remains in other state SIPs.

B. Removal of Gasoline Volatility Standards Applicable in the Illinois Portion the St. Louis, MO-IL Ozone Area

On October 6, 2014 EPA published a direct final rule to remove Illinois' 7.2 psi low RVP regulation from the state's SIP for its portion of the St. Louis, MO-IL ozone area. (See 79 FR 60065.) The removal became effective on December 5, 2014.

The 7.2 psi RVP fuel type was included in the published list of fuels. (See 71 FR 78199). Illinois was the only state with such a fuel type in its approved SIP. When EPA removed the approved 7.2 psi RVP fuel regulation from the Illinois SIP EPA was also obligated to remove this fuel type from the list of boutique fuels because this fuel type is no longer in any approved SIP.[3] Removal of this fuel type from the boutique fuels list has created room on the boutique fuels list. This may allow for approval of a new fuel type into a SIP and for it to be added to the list. However, the approval of a new fuel type into a SIP would be subject to certain restrictions as described in the December 28, 2006 **Federal Register** notice that established the list of boutique fuels. (See 71 FR 78193)

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal

Ohio EPA has met EPA's guidance and demonstrates anthropogenic VOCs are insignificant to the formation of $PM_{2.5}$ in these areas.

[3] EPA has previously updated its State Fuels and Gasoline Reid Vapor Pressure Web pages to reflect the removal of the 7.2 psi RVP requirement from the Illinois SIP.

governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: January 31, 2017.

Robert Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–03082 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2016–0163; EPA–HQ–OPPT–2016–0387; FRL–9959–03]

RIN 2070–AK03; 2070–AK11

Trichloroethylene (TCE); Regulation of Certain Uses Under Toxic Substances Control Act; Extension of Comment Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment periods.

SUMMARY: EPA issued two proposed rules under section 6 of the Toxic Substances Control Act (TSCA) to prohibit the manufacture (including importers), processing, and distribution in commerce of trichloroethylene (TCE) for use in aerosol degreasing, for use in spot cleaning in dry cleaning facilities, and for use in vapor degreasing; to prohibit commercial use of TCE for aerosol degreasing, for spot cleaning in dry cleaning facilities, and for use in vapor degreasing; to require manufacturers (including importers), processors, and distributors, except for retailers of TCE for any use, to provide downstream notification of these prohibitions throughout the supply chain; and to require limited recordkeeping. This document extends the comment periods for both proposed rules by an additional 30 calendar days each. A commenter requested additional time to submit written comments for the proposed rules. EPA is therefore extending the comment period in order to give all interested persons the opportunity to comment fully.

DATES: The comment period of the proposed rule published in the **Federal Register** of December 16, 2016 (81 FR 91592) is extended to March 16, 2017, and the comment date of the proposed rule published in the **Federal Register** of January 19, 2017 (82 FR 7432) is delayed to April 19, 2017.

ADDRESSES: Submit your comments, using the applicable docket ID number identified for that proposed rule, go at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods (*e.g.,* mail or hand delivery), the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket. The docket for each proposed rule contains supporting information used in developing the proposed rule, comments on the proposed rule, and additional supporting information. In addition to being available online at *http://www.regulations.gov,* the docket is available for inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding federal holidays, at the U.S. Environmental Protection Agency, EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Toni Krasnic, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0984; email address: *krasnic.toni@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the proposed rules issued in the **Federal Register** of December 16, 2016 (81 FR 91592) (FRL–9949–86) and January 19, 2017 (82 FR 7432) (FRL–9950–08). In those documents, EPA proposed under TSCA section 6 to prohibit the manufacture (including imports), processing, and distribution in commerce of TCE for use in aerosol degreasing, for use in spot cleaning in dry cleaning facilities, and for use in vapor degreasing; to prohibit commercial use of TCE for aerosol degreasing, for spot cleaning in dry cleaning facilities, and for use in vapor degreasing; to require manufacturers (including importers), processors, and distributors, except for retailers of TCE for any use, to provide downstream notification of these prohibitions throughout the supply chain; and to require limited recordkeeping. These two proposals together address risks for workers and consumers associated with exposure to TCE through inhalation that were identified in the 2014 TCE risk assessment and EPA intends to finalize both actions together. EPA is hereby extending the comment periods for both proposed rules by 30 calendar days, *i.e.,* for the document issued in the **Federal Register** of December 16, 2016 (identified by docket ID number EPA–HQ–OPPT–2016–0163), the comment period that was set to end on February 14, 2017, is now scheduled to end on March 16, 2017, and for the document issued in the **Federal Register** of January 19, 2017 (identified by docket ID number EPA–HQ–OPPT–2016–0387), the comment period that was set to end on March 20, 2017, is now scheduled to end on April 19, 2017.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** documents of December 16, 2016 and January 19, 2017. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Trichloroethylene, Recordkeeping.

Dated: February 8, 2017.

Wendy Cleland Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017–02965 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16–422; RM–11783; DA 17–125]

Radio Broadcasting Services; Fort Walton Beach, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rulemaking filed by Northwest Florida Media, LLC, proposing to amend the FM Table of Allotments, of the Commission's rules, by allotting Channel 295A at Fort Walton Beach, Florida, as a sixth local service. A staff engineering analysis indicates that Channel 295A can be allotted to Fort Walton Beach, consistent with the minimum distance separation requirements of the Commission's rules without a site restriction. The reference coordinates are 30–24–40 NL and 86–37–28 WL.

DATES: Comments must be filed on or before March 27, 2017, and reply comments on or before April 11, 2017.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: David D. Burns, Esq., Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 16–422, adopted February 2, 2017 and released February 3, 2017. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. The full text is also available online at *http://apps.fcc.gov/ecfs/.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the table is amended by adding an entry under Florida for Fort Walton Beach to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) *Table of FM Allotments.*

FLORIDA					
*	*	*	*	*	
Fort Walton Beach					295A
*	*	*	*	*	

* * * * *

[FR Doc. 2017–02977 Filed 2–14–17; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 82, No. 30
Wednesday, February 15, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 13–15, 2017 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, March 13, 2017

10:30 a.m.–11:00 a.m.—Budget Committee
11:00–11:30—Planning and Evaluation
11:30–Noon—Ad Hoc Committee on Design Guidance
1:30 p.m.–4:00 p.m.—Ad Hoc Committee on Frontier Issues

Tuesday, March 14, 2017

9:30 a.m.–10:30 a.m.—Technical Programs Committee
10:30–Noon—Presentation: Harmonization between the IBC and the 2010 ADA Standards

Wednesday, March 15, 2017

1:30 p.m.–3:00 p.m.—Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, March 15, 2017, the Access Board will consider the following agenda items:

- Approval of the draft January 11, 2017 meeting minutes (vote)
- Election of Officers (vote)
- Ad Hoc Committee Reports: Design Guidance and Frontier Issues
- Budget Committee
- Planning and Evaluation Committee
- Technical Programs Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, March 15, 2017. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, March 8, 2017. Registered commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, March 15, 2017 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2017–03002 Filed 2–14–17; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170111059–7089–01]

RIN 0691–XC055

BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–9. Reports are due 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that had total reportable revenues or total reportable expenses that were $5,000,000 or more during the prior year, or are expected to be $5,000,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign airline operators' revenues and expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–9 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-9help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03055 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170111061–7090–01]

RIN 0691–XC059

BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–30. Reports are due 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. ocean carriers that had total reportable revenues or total reportable expenses that were $500,000 or more during the prior year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–30 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-30help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03065 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170112072–7095–01]

RIN 0691–XC065

BE–577: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (BE–577). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–577. Reports are due 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–577 survey forms and instructions are available on the BEA Web site at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–577 inquiries can be made by phone to (301) 278–9261 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0004, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03056 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170111059–7089–01]

RIN 0691–XC058

BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–29. Reports are due 90 days after the end of each calendar year. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. agents of foreign carriers who handle 40 or more foreign ocean carrier port calls in the reporting period, or had covered expenses of $250,000 or more in the reporting period for all foreign ocean vessels handled by the U.S. Agent.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: This survey collects information on foreign ocean carriers' expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–29 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-29help@bea.gov.*

When To Report: Reports are due to BEA 90 days after the end of each calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 3 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03071 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170111057–7057–01]

RIN 0691–XC056

BE–11: Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of U.S. Direct Investment Abroad (BE–11). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–11. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–11 survey forms and instructions are available on the BEA Web site at *www.bea.gov/dia.*

Reporting

Additionally, notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–11.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. parent companies and their foreign affiliates.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–11 inquiries can be made by phone to (301) 278–9418 or by sending an email to *be10/11@bea.gov.*

When To Report: A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0053. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 138 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0053, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03052 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170111058–7112–01]

RIN 0691–XC057

BE–15: Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public

that it is conducting the mandatory survey titled Annual Survey of Foreign Direct Investment in the United States (BE–15). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–15. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31 (or by June 30 for reporting companies that use BEA's eFile system). This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–15 survey forms and instructions are available on the BEA Web site at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–15.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. affiliates of foreign companies.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–15 inquiries can be made by phone to (301) 278–9247 or by sending an email to *be12/15@bea.gov.*

When To Report: A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31 (or by June 30 for reporting companies that use BEA's eFile system).

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0034. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 18.2 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03072 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170112068–7092–01]

RIN 0691–XC061

BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–45. Reports are due 60 days after the end of each calendar quarter, or 90 days after the close of the calendar year. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. persons whose covered transactions exceeded $8 million (positive or negative) during the prior calendar year, or are expected to exceed that amount during the current calendar year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–45 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-45help@bea.gov.*

When To Report: Reports are due to BEA 60 days after the end of each calendar quarter, or 90 days after the close of the calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 8 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0066, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03059 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170112073–7073–01]

RIN 0691–XC066

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (BE–605). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–605. Reports are due 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–605 survey forms and instructions are available on the BEA Web site at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–605 inquiries can be made by phone to (301) 278–9422 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03057 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170112071–7096–01]

RIN 0691–XC064

BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). This survey is authorized by the International Investment and Trade in Services Survey Act and by Section

5408 of the Omnibus Trade and Competitiveness Act of 1988.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–185. Reports are due 45 days after the end of each fiscal quarter, except for the final quarter of the U.S. person's fiscal year when reports must be filed within 90 days. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801, and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908(b). Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Who Must Report: (a) Reports are required from each U.S. person who had sales of covered financial services to foreign persons that exceeded $20 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had purchases of covered financial services from foreign persons that exceeded $15 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions in the covered financial services between U.S. financial services providers and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–185 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-185help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the reporter's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0065, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b).

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03058 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170112069–7093–01]

RIN 0691–XC062

BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–125. Reports are due 45 days after the end of each fiscal quarter except for the final quarter. After the end of fiscal year of the U.S. person, reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had sales of covered services or intellectual property to foreign persons that exceeded $6 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year; or had purchases of covered services or intellectual property from foreign persons that exceeded $4 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. international trade

in selected services and intellectual property.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–125 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-125help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the reporter's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 16 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03061 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170111062–7091–01]

RIN 0691–XC060

BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–37. Reports are due 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. airline operators that had total reportable revenues or total reportable expenses that were $500,000 or more during the prior year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. airline operators' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–37 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-37help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, 725 17th Street NW., Washington DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03062 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 170112070–7094–01]

RIN 0691–XC063

BE–150: Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel (BE–150). This survey is authorized by the International

Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to notify all U.S. persons who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–150. Reports are due 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–150 survey forms and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) U.S. credit card companies and personal identification number (PIN)-based debit network companies that process payment and bank card transactions between U.S. cardholders and foreign businesses and between foreign cardholders and U.S. businesses.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the credit, debit, charge, automated teller machine (ATM), and point of sale transactions of U.S. persons traveling abroad and foreign persons traveling in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–150 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-150help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0072. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 16 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0072, 725 17th Street NW., Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–03060 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–162–2016]

Approval of Subzone Status, Best Petroleum Corporation, Toa Baja, Puerto Rico

On November 15, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by CODEZOL, C.D., grantee of FTZ 163, requesting subzone status subject to the existing activation limit of FTZ 163, on behalf of Best Petroleum Corporation in Toa Baja, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 83798–83799, November 22, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 163F is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 163's 923.36-acre activation limit.

Dated: February 8, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–03073 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–17–2017]

Foreign-Trade Zone 280—Ada and Canyon Counties, Idaho; Application for Subzone; Orgill, Inc.; Post Falls, Idaho

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Southwest Idaho Manufacturers' Alliance, grantee of FTZ 280, requesting subzone status for the facility of Orgill, Inc. (Orgill), located in Post Falls, Idaho. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 9, 2017.

The proposed subzone (31.13 acres) is located at 1881 West Seltice Way, Post Falls, Idaho. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 280.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 27, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 11, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: February 9, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–03074 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Final Results Antidumping Duty Administrative Review and Final Determination of No Shipments in Part; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 11, 2016, the Department of Commerce (the ''Department'') published the preliminary results of the eleventh administrative review (''AR'') of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC''). The period of review (''POR'') is January 1, 2015, through December 31, 2015. The AR covers 18 PRC exporters of subject merchandise, of which the Department selected one company for individual examination, Nantong Wangzhuang Furniture Co., Ltd. (''Nantong Wangzhuang''). For these final results, we continue to find that WBF has been sold in the United States at less than normal value and that certain companies subject to this administrative review had no shipments during the POR.

DATES: Effective February 15, 2017.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2016, the Department published, and invited interested parties to comment on, the *Preliminary Results.*[1] We received comments from the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively ''Petitioners''). No other party commented. We received no requests for a hearing. After consideration of Petitioners' comments, our final results remain unchanged from the *Preliminary Results.* For a complete description of the events that followed the publication of the *Preliminary Results, see* the Issues and Decision Memorandum[2] which is dated concurrently with, and hereby adopted by, this notice.

Scope of the Order

The product covered by the order is wooden bedroom furniture, subject to certain exceptions.[3] Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7009.92.1000, 7009.92.5000, 9403.20.0018, 9403.50.9041, 9403.50.9042, 9403.50.9045, 9403.50.9080, 9403.60.8081, and 9403.90.8041. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[4]

Analysis of the Comments Received

Final Results of Review

As noted above, only Petitioners submitted comments on the *Preliminary Results.* The issues raised in Petitioners' case brief are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit of the main Department building, Room B8024. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Separate Rates

In the *Preliminary Results,* the Department determined that seven companies under review, including Nantong Wangzhuang, the sole mandatory respondent, did not establish their eligibility for separate rate status and would be treated as part of the PRC-wide entity.[5] No parties argued against our preliminary separate rates determination.[6] In these final results of review, we continue to determine that these seven companies should be treated as part of the PRC-wide entity, because they have not established their separate rate eligibility. Because no party requested a review of the PRC-wide entity, we are not conducting a review of the PRC-wide entity.[7] Thus, there is no change to the rate for the PRC-wide entity from the *Preliminary Results.* The existing rate for the PRC-wide entity is 216.01 percent.

Final Determination of No Shipments

In the *Preliminary Results,* we determined that 11 companies subject to this AR had no shipments of subject merchandise and, therefore no reviewable transactions, during the POR.[8] We received no comments

[1] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments in Part; 2015,* 81 FR 70092 (October 11, 2016) (''*Preliminary Results*'').

[2] *See* the Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Wooden Bedroom Furniture from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Eleventh Antidumping Duty Administrative Review'' (''Issues and Decision Memorandum'').

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (''*Order*'').

[4] For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

[5] *See Preliminary Results.* The six companies that did not establish their eligibility for a separate rate, besides Nantong Wangzhuang, are: (1) Dongguan Singways Furniture Co., Ltd.; (2) Clearwise Co., Ltd.; (3) Passwell Corporation; Pleasant Wave Ltd.; (4) Shanghai JianPu Export & Import Co., Ltd.; (5) Decca Furniture Ltd.; and (6) Hangzhou Cadman Trading Co., Ltd. (Exporter), Haining Changbei Furniture Co., Ltd. (Producer).

[6] *See* Memorandum from Edward Yang, Senior Director, Office VII for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary results of the Antidumping Duty Administrative Review: Wooden Bedroom Furniture from the People's Republic of China,'' dated October 3, 2016 (''Preliminary Decision Memorandum'').

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[8] The 11 companies or company groupings with no shipments during the POR are: (1) Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmount Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.; (2) Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (Pte) Ltd.; (3) Golden Well

Continued

concerning our finding of no shipments by these 11 companies. In these final results of review, we continue to determine that these 11 companies had no shipments of subject merchandise during the POR. For a full discussion of this determination, see the *Preliminary Decision Memorandum.*

Assessment Rates

Pursuant to section 751(a)(2)(C) Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of review. We intend to instruct CBP to liquidate POR entries of subject merchandise from the seven companies, including Nantong Wangzhuang, which failed to establish their eligibility for separate rate status at the rate applicable to the PRC-wide entity. For the 11 companies which the Department determined had no shipments during the POR, if there are any suspended entries under any of those companies' antidumping case numbers, they will be liquidated at the assessment rate for the PRC-wide entity.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including Nantong Wangzhuang and the six companies noted above, the cash deposit rate will be the rate for the PRC-wide entity, which is 216.01 percent; (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter; (4) if the exporter is not a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: February 8, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

[FR Doc. 2017–03046 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–DS–P

International (HK) Ltd.; (4) Jiangsu Tairui Structure Engineering Co., Ltd.; (5) Nanhai Jiantai Woodwork Co., Ltd., Fortune Glory Industrial Ltd. (H.K. Ltd.); (6) Rizhao Sanmu Woodworking Co., Ltd.; (7) Shenyang Shining Dongxing Furniture Co., Ltd.; (8) Wanvog Furniture (Kunshan) Co., Ltd.; (9) Woodworth Wooden Industries (Dong Guan) Co., Ltd.; (10) Yeh Brothers World Trade Inc.; and (11) Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.

[9] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–837]

Certain Magnesia Carbon Bricks From Mexico: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico for the period of review (POR) September 1, 2015, through August 31, 2016.

DATES: Effective February 15, 2017.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2016, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico for the POR.[1] The Department received a timely request from the Magnesia Carbon Bricks Fair Trade Committee (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this antidumping duty order.[2]

On November 9, 2016, the Department published in the **Federal Register** a notice of initiation with respect to RHI-Refmex S.A. de C.V., Trafinsa S.A. de C.V., Vesuvius Mexico S.A. de C.V., and Ferro Alliages & Mineraux Inc.[3] On February 3, 2017, the petitioner timely

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 62096 (September 8, 2016).

[2] *See* Letter from the petitioner, regarding ''Certain Magnesia Carbon Bricks from Mexico: Request for Administrative Review,'' dated September 30, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 78778, 78781 (November 9, 2016).

withdrew its request for an administrative review.[4]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner withdrew its request for review by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the antidumping duty order on magnesia carbon bricks from Mexico covering the period September 1, 2015, through August 31, 2016.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 41 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: February 10, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017–03047 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* Letter from the petitioner, regarding ''Certain Magnesia Carbon Bricks from Mexico: Withdrawal of Request for Administrative Review,'' dated February 3, 2017.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (USITC) that revocation of the antidumping duty order on glycine from the People's Republic of China (the PRC) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of this antidumping duty order.

DATES: Effective February 15, 2017.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3362 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1995, the Department published the antidumping duty order on glycine from the PRC.[1] On August 1, 2016, the Department initiated a sunset review of the *Order* in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

As a result of this sunset review, the Department determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the USITC of the magnitude of the margins of dumping likely to prevail should the order be revoked.[3] On February 3, 2017, the USITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United Sates within a reasonably foreseeable time.[4]

Scope of the Order

The product covered by the order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This order covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under the order is dispositive.[5]

Continuation of the *Order*

As a result of the determinations by the Department and the USITC that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the *Order.*

U.S. Customs and Border Protection will continue to collect cash deposits of estimated antidumping duties at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of this order will be the effective date listed above. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next sunset review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

[1] *See Glycine from the People's Republic of China: Antidumping Duty Order,* 60 FR 16116 (March 29, 1995) (*Order*).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 81 FR 50462 (August 1, 2016).

[3] *See Glycine from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 81 FR 88663 (December 8, 2016) and accompanying Issues and Decision Memorandum.

[4] *See Glycine from China; Determination,* 82 FR 9223 (February 3, 2017), and USITC Publication 4667 (January 2017), entitled *Glycine from China: Investigation No. 731–TA–718 (Fourth Review).*

[5] In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the *Order. See Notice of Scope Rulings,* 62 FR 62288 (November 21, 1997).

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 9, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–03048 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Building for Environmental and Economic Sustainability (BEES) Please.

OMB Control Number: 0693–0036.

Form Number(s): None.

Type of Request: Renewal (of a current information collection) with changes.

Number of Respondents: 30.

Average Hours per Response: 63 minutes.

Burden Hours: 31.5.

Needs and Uses: BEES Please is a voluntary program to collect data from product manufacturers so that the environmental performance of their products may be evaluated scientifically using the BEES software. These data include product-specific materials use, energy consumption, waste, and environmental releases. BEES evaluates these data, translates them into decision-enabling results, and delivers them in a visually intuitive graphical format.

Affected Public: Business or other for profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2017–03038 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF086

Atlantic Highly Migratory Species; Exempted Fishing Permits; Extension of Public Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; extension of comment period; and announcement of a public webinar.

SUMMARY: NMFS published a notice in the **Federal Register** on January 17, 2017, announcing the receipt of an application for an exempted fishing permit (EFP) from Dr. David Kerstetter of Nova Southeastern University to evaluate pelagic longline (PLL) catch and bycatch rates from within the northern portion of the East Florida Coast (EFC) PLL Closed Area and compare those rates to rates from outside the EFC PLL Closed Area. The availability of a Draft Environmental Assessment (EA) analyzing the impacts of granting the application with certain terms and conditions was also announced in the same **Federal Register** notice. NMFS provided a 30-day comment period in the January **Federal Register** notice, but given interest from the public, NMFS is extending the comment period for the action to March 29, 2017, and conducting a public webinar on March 27, 2017, to facilitate public comments.

DATES: The public comment period for the notice published at 82 FR 4856, January 17, 2017, is extended from February 16, 2017, until March 29, 2017.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Email: nmfs.hms.pllefp@noaa.gov.* Include in the subject line the following identifier: 0648–XF086.
- *Mail:* Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell at (301) 427–8503 or Rick Pearson at (727) 824–5399.

SUPPLEMENTARY INFORMATION:

Background

The application and Draft EA, as well as public comments received thus far, are available for review on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/index.html.* NMFS invites comments on the specific terms and conditions of the EFP, if issued, and the analyses presented in the Draft EA.

Extension of Comment Period

The original comment period was scheduled to end on February 16, 2017. Given interest from the public and to allow additional time for Regional Fishery Management Councils to discuss the EFP application and Draft EA at upcoming meetings, NMFS is extending the public comment period for this action to March 29, 2017. Additionally, because of requests to hold a public meeting in South Florida regarding this issue, NMFS has decided to hold a public webinar to facilitate public comments from across the geographic range of the U.S. Atlantic PLL fishery.

Public Webinar

The public webinar will be held on March 27, 2017, from 1 p.m.–4 p.m. EST. Information on how to attend the webinar can be found on the HMS Management Division's Web page at: *http://www.nmfs.noaa.gov/sfa/hms/compliance/efp/pll_efp_webinar.html.*

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: February 9, 2017.

Karen H. Abrams,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–03010 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF187

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of unsuccessful referendum.

SUMMARY: NMFS issues this notice to inform persons of the unsuccessful referendum for a second fishing capacity reduction loan in the Southeast Alaska Purse Seine Salmon Fishery, effective January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Sturtevant at (301) 427–8799, fax (301) 713–1306, or *michael.a.sturtevant@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Southeast Alaska Purse Seine Salmon Fishery is a commercial fishery in Alaska state waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC). Congress authorized a $23.5 million loan to finance a fishing capacity reduction program in the Southeast Alaska Purse Seine Salmon Fishery. NMFS published proposed program regulations on May 23, 2011 (76 FR 29707), and final program regulations on October 6, 2011 (76 FR 61986), to implement the reduction program.

In 2012, NMFS conducted a referendum to determine the remaining fishermen's willingness to repay a $13.1 million fishing capacity reduction loan to remove 64 permits. After a majority of permit holders approved the loan, NMFS disbursed payments to the successful bidders and began collecting fees to repay the loan.

In August 2016, the Southeast Revitalization Association (SRA) submitted a second capacity reduction plan to NMFS and NMFS approved the second plan in October 2016. Since only $13.1 million was expended from the total loan amount, $10.4 remains available. Approval of this second referendum would have resulted in a second loan of $5.8 million and permanently retired an additional 22 permits from the fishery. The final regulations required NMFS to provide public notice before conducting a referendum to determine the industry's willingness to repay a second fishing capacity reduction loan to purchase the permits identified in the second reduction plan.

Comments on the proposed referendum were accepted until 5 p.m. EST December 7, 2016. Between November 14 and November 17, 2016, NMFS held a series of public meetings with Southeast Alaska purse seine salmon permit holders and interested individuals. The meetings were held in Sitka, AK, Ketchikan, AK, Petersburg, AK, and Seattle, WA.

II. Present Status

As of October 21, 2016, there were 315 permits in the fishery designated as S01A by CFEC. These permanent permit holders were eligible to vote in this second referendum. NMFS mailed referendum information, voting instructions, and a referendum ballot to each of the permit owners. The referendum voting period commenced December 13, 2016 and ended on January 13, 2017. Any votes received by NMFS after 5 p.m. on January 13, 2017, were not counted. NMFS issued 315 ballots. 50 CFR 600.1107 (e)(3)(ii), states that ''a successful referendum by a majority of the Permit Holders in the Reduction Fishery shall bind all parties and complete the reduction process,'' Therefore, a minimum of 158 ballots in favor of the buyback program was necessary to approve the new fees. NMFS received 180 (57%) timely and valid ballots. 132 were for approving the proposed buyback. As a result, the proposed buyback referendum was not successful and the second buyback loan was not approved.

Dated: February 8, 2017.

Brian T. Pawlak,

CFO/Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2017–03054 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE926

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Air Force Conducting Maritime Weapon Systems Evaluation Program Operational Testing Within the Eglin Gulf Test and Training Range

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations we (NMFS) hereby give notice that we have issued an Incidental Harassment Authorization (IHA) to the U.S. Air Force, Eglin Air Force Base (Eglin AFB), to take two species of marine mammals, the Atlantic bottlenose dolphin (*Tursiops truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*), by harassment, incidental to a Maritime Weapon Systems Evaluation Program (Maritime WSEP) within the Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico from February 4, 2017 through February 3, 2018. Eglin AFB's activities are military readiness activities per the MMPA, as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2004.

DATES: Effective February 4, 2017 through February 3, 2018.

ADDRESSES: An electronic copy of the final Authorization, Eglin AFB's application and their final Environmental Assessment (EA) titled, ''Maritime Weapons System Evaluation Program'' are available by writing to Ms. Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; by telephoning the contacts listed here at 301–427–8401, or by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Dale Youngkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment and that NMFS makes certain findings.

An Authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Where there is the potential for serious injury or death, the allowance of incidental taking requires promulgation of regulations under section 101(a)(5)(A). Subsequently, a Letter (or Letters) of Authorization may be issued as governed by the prescriptions established in such regulations, provided that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize incidental taking by harassment only (*i.e.,* no serious injury or mortality) for periods of not more than one year, pursuant to requirements and conditions contained within an Incidental Harassment Authorization (IHA). The promulgation of regulations or issuance of IHAs (with their associated prescripted mitigation, monitoring, and reporting) requires notice and opportunity for public comment.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated earlier and amended the definition of harassment as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Summary of Request

On February 4, 2016, we issued an Authorization to Eglin AFB to take marine mammals, by harassment, incidental to a Maritime WSEP within the EGTTR in the Gulf of Mexico from February 4, 2016 through February 3, 2017 (see 81 FR 7307; February 11, 2016). These missions were very similar to previous Maritime WSEP mission activities for which incidental harassment authorizations were issued the previous year (80 FR 17394; April 1, 2015). On September 19, 2016, we received a renewal request for an Authorization from Eglin AFB to continue the missions authorized in 2016. We considered the revised renewal request as adequate and complete on September 27, 2016.

Due to the ongoing nature of these activities, as well as the fact that other mission activities are conducted within the EGTTR, we have discussed developing a rulemaking to encompass all mission activities in the EGTTR, and anticipate that the Maritime WSEP activities will be part of that future rulemaking. However, this Authorization is being granted due to timing constraints to ensure that these activities are in compliance with the MMPA while the future rulemaking is in process.

Eglin AFB will conduct Maritime WESP missions within the EGTTR airspace over the Gulf of Mexico within Warning Area 151 (W–151), specifically within sub-area W–151A (see Figure 2–1 of Eglin AFB's application and Figure 1 below). The Maritime WSEP training activities are planned to occur during daylight hours in February and March 2017, however, the activities could occur between February 4, 2017, and February 3, 2018.

Eglin AFB will use multiple types of live munitions (*e.g.,* gunnery rounds, rockets, missiles, and bombs) against small boat targets in the EGTTR. These activities qualify as military readiness activities.

The following aspects of the Maritime WSEP training activities have the potential to take marine mammals: Exposure to impulsive noise and pressure waves generated by live ordnance detonation at or near the surface of the water. Take, by Level B harassment, of individuals of common bottlenose dolphin or Atlantic spotted dolphin could potentially result from the specified activity. Additionally, although NMFS does not expect it to occur, Eglin AFB has also requested authorization for Level A harassment of up to four individuals of either common bottlenose dolphins (2) or Atlantic spotted dolphins (1). Therefore, Eglin AFB requested authorization to take individuals of two cetacean species by Level A and Level B harassment.

Eglin AFB's Maritime WSEP training activities may potentially impact marine mammals at or near the water surface in the absence of mitigation. Marine mammals could potentially be harassed, injured, or killed by exploding and non-exploding projectiles, and falling debris. However, based on analyses provided in Eglin AFB's 2016 application, Eglin AFB's previous applications and Authorizations, Eglin AFB's EA, and past monitoring reports for the authorized activities conducted in February and March 2016 and 2015, and for reasons discussed later in this document, we do not anticipate that Eglin AFB's Maritime WSEP activities will result in any serious injury or mortality to marine mammals.

For Eglin AFB, this will be the third such Maritime WSEP Authorization following the Authorization issued effective from February 4, 2016, through February 3, 2017 (see 81 FR 7307; February 11, 2016). This Authorization will be effective from February 4, 2017, through February 3, 2018. The monitoring report associated with the 2016 Authorization is available at *www.nmfs.noaa.gov/pr/permits/incidental/military.htm* and provides additional environmental information related to issuance of this Authorization.

Description of the Specified Activity

Overview

Eglin AFB will conduct live ordnance testing and training in the EGTTR within the Gulf of Mexico as part of the Maritime WSEP operational testing missions. The Maritime WSEP test objectives are to evaluate maritime deployment data, evaluate tactics, techniques and procedures, and to determine the impact of techniques and procedures on combat Air Force training. The need to conduct this type of testing has developed in response to increasing threats at sea posed by operations conducted from small boats, which can carry a variety of weapons, can form in large or small numbers, and may be difficult to locate, track, and engage in the marine environment. Because of limited Air Force aircraft and munitions testing on engaging and defeating small boat threats, Eglin AFB will employ live munitions against boat targets in the EGTTR in order to continue development of techniques and procedures to train Air Force strike aircraft to counter small maneuvering surface vessels.

Dates and Duration

Eglin AFB will schedule up to eight Maritime WSEP training missions occurring during a one-week period in February 2017 and a one-week period in March 2017. The missions will occur for up to four hours each day during the morning hours, with multiple live munitions being released per day. However, the Authorization is effective to cover those activities anytime during the period from February 4, 2017 through February 3, 2018.

Specified Geographic Region

The specific planned mission location is approximately 17 miles (mi) (27.3 kilometers (km)) offshore from Santa Rosa Island, Florida, in nearshore waters of the continental shelf in the Gulf of Mexico. All activities will place within the EGTTR, defined as the

airspace over the Gulf of Mexico controlled by Eglin AFB, beginning at a point 3 nautical miles (nmi) (3.5 mi; 5.5 km) from shore. The EGTTR consists of subdivided blocks including Warning Area 151 (W–151) where the activities will occur, specifically in sub-area W–151A (shown in Figure 1).

W–151: The inshore and offshore boundaries of W–151 are roughly parallel to the shoreline contour. The shoreward boundary is 3 nmi (3.5 mi; 5.5 km) from shore, while the seaward boundary extends approximately 85 to 100 nmi (97.8 mi; 157.4 km to 115 mi; 185.2 km) offshore, depending on the specific location. W–151 covers a surface area of approximately 10,247 square nmi (nmi^2) (13,570 square mi (mi^2); 35,145 square km (km^2)), and includes water depths ranging from about 20 to 700 meters (m) (65.6 to 2296.6 feet (ft)). This range of depth includes continental shelf and slope waters. Approximately half of W–151 lies over the shelf.

W–151A: W–151A extends approximately 60 nmi (69.0 mi; 111.1 km) offshore and has a surface area of 2,565 nmi^2 (3,396.8 mi^2; 8,797 km^2). Water depths range from about 30 to 350 m (98.4 to 1148.2 ft) and include continental shelf and slope zones. However, most of W–151A occurs over the continental shelf, in water depths less than 250 m (820.2 ft). Maritime WSEP training missions will occur in the shallower, northern inshore portion of the sub-area, in a water depth of about 35 m (114.8 ft).

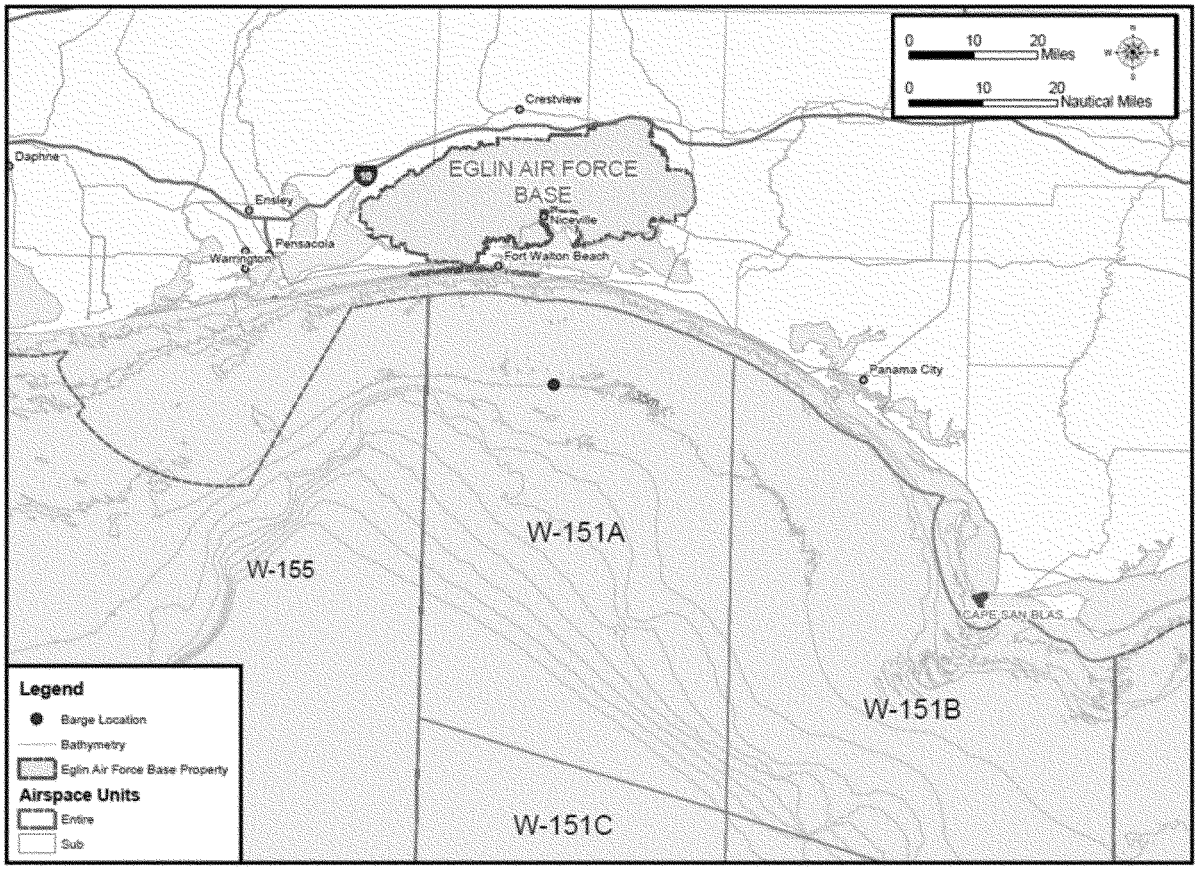

Figure 1 –Maritime WSEP operational testing location in block W-151A in the EGTTR.

Detailed Description of Activities

The Maritime WSEP training missions include the release of multiple types of inert and live munitions from fighter and bomber aircraft, unmanned aerial vehicles, and gunships against small, static, towed, and remotely-controlled boat targets. Munition types include bombs, missiles, rockets, and gunnery rounds (Table 1).

TABLE 1—LIVE MUNITIONS AND AIRCRAFT

Munitions	Aircraft (not associated with specific munitions)
GBU–10/–24/–31	F–16C fighter aircraft.
GBU–49	F–16C+ fighter aircraft.
JASSM	F–15E fighter aircraft.
GBU–12 (PWII)/–54 (LJDAM)/–38/–32 (JDAM)	A–10 fighter aircraft.
AGM–65 (Maverick)	B–1B bomber aircraft.

TABLE 1—LIVE MUNITIONS AND AIRCRAFT—Continued

Munitions	Aircraft (not associated with specific munitions)
CBU–105 (WCMD) GBU–39 (Small Diameter Bomb) AGM–114 (Hellfire) AGM–176 (Griffin). 2.75 Rockets/AGR–20A/B. AIM–9X. PGU–12/B high explosive incendiary 30 mm rounds.	B–52H bomber aircraft. MQ–1/9 unmanned aerial vehicle. AC–130 gunship.

Key: AGM = air-to-ground missile; CBU = Cluster Bomb Unit; GBU = Guided Bomb Unit; LJDAM = Laser Joint Direct Attack Munition; Laser SDB = Laser Small Diameter Bomb; mm = millimeters; PGU = Projectile Gun Unit; WCMD = wind corrected munition dispenser.

The Maritime WSEP training activities involve detonations above the water, near the water surface, and under water within the EGTTR. However, because the tests will focus on weapons/target interaction, Eglin AFB will not specify a particular aircraft for a given test as long as it meets the delivery parameters.

Eglin AFB will deploy the munitions against static, towed, and remotely-controlled boat targets within the W–151A. Eglin AFB will operate the remote-controlled boats from an instrumentation barge (*i.e.,* the Gulf Range Armament Test Vessel (GRATV)) anchored on site within the test area. The GRATV provides a platform for video cameras and weapons-tracking equipment.

Table 2 lists the number, height, or depth of detonation, explosive material, and net explosive weight (NEW) in pounds (lbs) of each munition that will be used during the Maritime WSEP activities.

TABLE 2—MARITIME WSEP MUNITIONS TO BE USED IN THE W–151A TEST AREA

Type of munition	Total number of live munitions	Detonation type	Net explosive weight per munition (lbs)
GBU–10/–24/–31	2	Subsurface (10-ft depth)	945
GBU–49	4	Surface	500
JASSM	4	Surface	255
GBU–12 (PWII)/–54 (LJDAM)/–38/–32 (JDAM)	6	Subsurface (10-ft depth)	192
AGM–65 (Maverick)	8	Surface	86
CBU–105 (WCMD)	4	Airburst	83
GBU–39 (Small Diameter Bomb)	4	Surface	37
AGM–114 (Hellfire)	20	Subsurface (10-ft depth)	20
AGM–176 (Griffin)	10	Surface	13
2.75 Rockets/AGR–20A/B	100	Surface	12
AIM–9X	1	Surface	7.9
PGU–12/B high explosive incendiary 30 mm rounds	1,000	Surface	0.1

Key: AGL = above ground level; AGM = air-to-ground missile; CBU = Cluster Bomb Unit; GBU = Guided Bomb Unit; JDAM = Joint Direct Attack Munition; LJDAM = Laser Joint Direct Attack Munition; mm = millimeters; msec = millisecond; lbs = pounds; PGU = Projectile Gun Unit; HEI = high explosive incendiary.

At least two ordnance delivery aircraft will participate in each live weapons release training mission, which lasts approximately four hours. Before delivering the ordnance, mission aircraft will make a dry run over the target area to ensure that it is clear of commercial and recreational boats. Jets will fly at a minimum air speed of 300 knots (approximately 345 miles per hour, depending on atmospheric conditions) and at a minimum altitude of 305 m (1,000 ft). Due to the limited flyover duration and potentially high speed and altitude, the pilots will not participate in visual surveys for protected species.

Eglin AFB's 2016 and 2015 Authorization renewal request, 2014 application for the same activities, and 2015 EA and Finding of No Significant Impact (FONSI) contain additional detailed information on the Maritime WSEP training activities and are all available online (*www.nmfs.noaa.gov/pr/permits/incidental/military.htm*). NMFS provided detailed descriptions of the Maritime WSEP training operations in a previous notice for the proposed Authorization (81 FR 83209; November 21, 2016). This information has not changed between the proposed Authorization and this final notice announcing the issuance of the Authorization.

Comments and Responses

A notice of receipt of Eglin AFB's application and NMFS' proposal to issue an Authorization to the U.S. Air Force, Eglin AFB, published in the **Federal Register** on November 21, 2016 (81 FR 83209). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC) and one concerned citizen. Following, are the comments received from the MMC and the concerned citizen, as well as NMFS' responses.

MMC Comment 1: MMC recommended that NMFS (1) follow NMFS policy of a 24-hour reset for enumerating the number of each species that could be taken during the proposed activities; (2) apply standard rounding rule before summing the numbers of estimated takes across days; and (3) for species that have the potential to be taken but model-estimated or calculated takes round to zero, use group size to inform the take estimates—The MMC recommended that NMFS use these methods consistently for all future incidental take authorizations.

Response: Calculating predicted take is not an exact science, and there are

arguments for taking different mathematical approaches in different situations and for making qualitative adjustments in other situations. NMFS is currently engaged in developing a protocol to guide more consistent take calculations given certain circumstances. However, we believe that the method used here supports the most appropriate take estimate for this action and does not run counter to any ''24-hour reset policy.''

MMC Comment 2: The MMC states that Eglin AFB has used, and proposes to continue the use of live-feed video cameras to supplement its effectiveness in detecting marine mammals when implementing mitigation measures. However, the MMC is not convinced that those measures are sufficient to effectively monitor for marine mammals entering the training areas during the 30-minute timeframe prior to detonation. In addition, the MMC states that it does not believe that Eglin AFB can deem the Level A harassment zone clear of marine mammals when using only three video cameras for monitoring. Thus, the MMC recommends that NMFS require Eglin AFB to (1) supplement its mitigation measures with passive acoustic monitoring and (2) determine the effectiveness of its suite of mitigation measures for activities at Eglin prior to incorporating presumed mitigation effectiveness into its take estimation analyses or negligible impact determinations.

Response: NMFS has worked closely with Eglin AFB over the past several Authorization cycles to develop proper mitigation, monitoring, and reporting requirements designed to minimize and detect impacts from the specified activities and ensure that NMFS can make the findings necessary for issuance of an Authorization. Further, the take estimation and negligible impact determinations in this Authorization do not rely on a presumption of mitigation effectiveness. Take estimates were based on modeling efforts and were not reduced due to mitigation measures.

Monitoring also includes vessel-based observers for marine species up to 30 minutes prior to deploying live munitions in the area. Eglin AFB has submitted annual reports to NMFS every year that describes all activities that occur in the EGTTR. In addition, Eglin AFB submitted annual reports to NMFS at the conclusion of the Maritime Strike Operations These missions are similar in nature to the maritime WSEP operations and the Eglin AFB provided information on sighting information and results from post-mission survey observations. Based on those results, NMFS determined that the mitigation measures ensured the least practicable adverse impact to marine mammals. There were no observations of injured marine mammals and no reports of marine mammal mortality during the Maritime Strike Operation activities. The measures for the Maritime WSEP are similar, except they will include larger survey areas based on updated acoustic analysis and previous discussions with the MMC and NMFS.

Eglin AFB will continue to research the feasibility of supplementing existing monitoring efforts with passive acoustic monitoring devices for future missions, and has recently requested funding to do so. However, even if this funding request is approved, the funds will not be available to implement the additional measures for this Authorization. If funding is approved, passive acoustic monitoring will be included in future missions that may be part of the proposed rule to cover multiple activities in the EGTTR.

Concerned Citizen Comment 1: The private citizen commented that the U.S. Air Force should ''bomb dead areas like the Gulf of Mexico where no life can live anyway'', and expressed opposition to the U.S. Air Force proposed Maritime WSEP activities out of concern that endangered animals would be harmed.

Response: As noted in the **Federal Register** on November 21, 2016 (81 FR 83209), the Maritime WSEP activities will take place in the Gulf of Mexico. In addition, due to the location of the activities, no threatened or endangered species are anticipated to be taken and NMFS has not authorized any take of threatened or endangered species. Finally, the information presented in the notice for the proposed Authorization (81 FR 83209; November 21, 2016) indicates that modeling results show zero takes for mortality, and three takes by Level A harassment. We make a correction: Table 9 of the proposed Authorization indicated these three Level A takes were for permanent threshold shift (PTS) only. However, the correct estimate includes three PTS takes and one slight lung injury take. However, NMFS does not believe that serious injury will result from this activity and that therefore it is not necessary to issue regulations through section 101(a)(5)(A) of the MMPA, rather, an IHA is appropriate.

Description of Marine Mammals in the Area of the Specified Activity

Table 3 lists marine mammal species with potential or confirmed occurrence in the activity area during the project timeframe and summarizes key information regarding stock status and abundance. Please see NMFS' 2015 and 2014 Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars* and Garrison *et al.,* 2008; Navy, 2007; Davis *et al.,* 2000 for more detailed accounts of these stocks' status and abundance.

TABLE 3—MARINE MAMMALS THAT MAY OCCUR IN THE ACTIVITY AREA

Species	Stock name	Regulatory status [1 2]	Estimated abundance	Relative occurrence n W–151
Common bottlenose dolphin	Choctawatchee Bay	MMPA–S ESA–NL	179 [3] CV = 0.04	Uncommon.
	Pensacola/East Bay	MMPA–S ESA–NL	33 [4] CV = 0.80	Uncommon.
	St. Andrew Bay	MMPA–S ESA–NL	124 [4] CV = 0.57	Uncommon.
	Gulf of Mexico Northern Coastal	MMPA–S ESA–NL	7,185 [3] CV = 0.21	Common.
	Northern Gulf of Mexico Continental Shelf	MMPA–NC ESA–NL	51,192 [3] CV = 0.10	Uncommon.
	Northern Gulf of Mexico Oceanic	MMPA–NC ESA–NL	5,806 [4] CV = 0.39	Uncommon.

TABLE 3—MARINE MAMMALS THAT MAY OCCUR IN THE ACTIVITY AREA—Continued

Species	Stock name	Regulatory status [1] [2]	Estimated abundance	Relative occurrence n W–151
Atlantic spotted dolphin	Northern Gulf of Mexico	MMPA–NC ..... ESA–NL	[4] 37,611 CV = 0.28	Common.

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] NMFS Draft 2015 SAR (Waring *et al.,* 2015).
[4] NMFS 2014 SAR (Waring *et al.,* 2014).

An additional 19 cetacean species could occur within the northeastern Gulf of Mexico, mainly occurring at or beyond the shelf break (*i.e.,* water depth of approximately 200 m (656.2 ft)) located beyond the W–151A test area. NMFS and Eglin AFB consider these 19 species to be rare or extralimital within the W–151A test location area. These species are the Bryde's whale (*Balaenoptera edeni*), sperm whale (*Physeter macrocephalus*), dwarf sperm whale (*Kogia sima*), pygmy sperm whale (*K. breviceps*), pantropical spotted dolphin (*Stenella attenuata*), Clymene dolphin (*S. clymene*), spinner dolphin (*S. longirostris*), striped dolphin (*S. coeruleoalba*), Blainville's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*M. europaeus*), Cuvier's beaked whale (*Ziphius cavirostris*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), Risso's dolphin (*Grampus griseus*), Fraser's dolphin (*Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), rough-toothed dolphin (*Steno bredanensis*), and short-finned pilot whale (*Globicephala macrorhynchus*).

Of these species, only the sperm whale is listed as endangered under the Endangered Species Act (ESA) and as depleted throughout its range under the MMPA. Sperm whale occurrence within W–151A is unlikely because almost all reported sightings have occurred in water depths greater than 200 m (656.2 ft).

Because these species are unlikely to occur within the W–151A area, Eglin AFB has not requested and we are not proposing to authorize take for them. Thus, we do not consider these species further in this notice.

We have reviewed Eglin AFB's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. That information is contained in sections 3 and 4 of Eglin AFB's 2016 Authorization application and in Chapter 3 of Eglin AFB's Environmental Assessment (EA) and we incorporate those sections by reference rather than reprinting the information here.

Other Marine Mammals in the Action Area

The endangered West Indian manatee (*Trichechus manatus*) rarely occurs in the area (USAF 2014). The U.S. Fish and Wildlife Service has jurisdiction over the manatee; therefore, we did not include an Authorization to harass manatees and do not discuss this species further in this notice.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section of the notice of the proposed Authorization (81 FR 83209, November 21, 2016) included a summary and discussion of the ways that components (*e.g.,* exposure to impulsive noise and pressure waves generated by live ordnance detonation at or near the surface of the water) of the specified activity, including mitigation, may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect Eglin AFB to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals. We will consider the content of the following sections: ''Estimated Take by Incidental Harassment'' and ''Mitigation'' to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

In summary, the Maritime WSEP training exercises under this Authorization have the potential to take marine mammals by exposing them to impulsive noise and pressure waves generated by live ordnance detonation at or near the surface of the water. Exposure to energy or pressure resulting from these detonations could result in Level A harassment (PTS and slight lung injury) and by Level B harassment (temporary threshold shift (TTS) and behavioral harassment). In addition, NMFS also considered the potential for harassment from vessel operations.

The potential effects of impulsive sound sources (underwater detonations) from the training activities may include one or more of the following: Tolerance, masking, disturbance, hearing threshold shift, stress response, and mortality. NMFS provided detailed information on these potential effects in the notice of the proposed Authorization (81 FR 83209; November 21, 2016). The information presented in that notice has not changed.

Anticipated Effects on Habitat

Detonations of live ordnance will result in temporary changes to the water environment. Munitions could hit the targets and not explode in the water. However, because the targets are located over the water, in water explosions could occur. An underwater explosion from these weapons could send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. However, these effects will be temporary and not expected to last more than a few seconds.

Similarly, Eglin AFB does not expect any long-term impacts with regard to hazardous constituents to occur. Eglin AFB considered the introduction of fuel, debris, ordnance, and chemical materials into the water column within its EA and determined the potential effects of each to be insignificant. NMFS provided a summary of the analyses in the notice for the proposed Authorization (81 FR 83209; November 21, 2016). The information presented in that notice has not changed.

Mitigation

In order to issue an Authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its

habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses (where relevant).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

NMFS and Eglin AFB worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.'' We refer the reader to section 11 of Eglin AFB's application for more detailed information on mitigation measures which include the following:

Vessel-Based Monitoring

Eglin AFB will station a large number of range clearing boats (approximately 30 to 35) around the test site to prevent non-participating vessels from entering the human safety zone. Based on the composite footprint, range clearing boats will be located approximately 15.28 km (9.5 mi) from the detonation point (see Figure 11–1 in Eglin AFB's application). However, the actual distance will vary based on the size of the munition being deployed.

Trained protected species observers (PSO) will be aboard five of these boats and will conduct protected species surveys before and after each test. The protected species survey vessels will be dedicated solely to observing for marine species during the pre-mission surveys while the remaining safety boats clear the area of non-authorized vessels. The protected species survey vessels will begin surveying the area at sunrise. The area to be surveyed will encompass the zone of influence (ZOI), which is discussed in more detail below.

Because of human safety issues, PSOs will be required to leave the test area at least 30 minutes in advance of live weapon deployment and move to a position on the safety zone periphery, approximately 15.28 km (9.5 mi) from the detonation point. PSOs will continue to scan for marine mammals from the periphery. Animals that may enter the area after Eglin AFB has completed the pre-mission surveys and prior to detonation will not reach the predicted smaller slight lung injury and/or mortality zones due to their swim speed and the size of the clearance zone.

Determination of the Zone of Influence

Historically, Eglin AFB has conservatively used the number of live weapons deployed to estimate take of marine mammals. This method assumed a fresh population of marine mammals for each detonation to calculate the number taken. However, NMFS requested mission-day scenarios in order to be able to model accumulated energy. Therefore, each mission-day scenario is considered a separate event to model takes as opposed to modeling for each live detonation. Eglin AFB developed three mission-day categories (Category A, which represents levels of activities considered a worst-case scenario consisting of ordnances with large explosive weights as well as surface and subsurface detonations; Category B, which represents a 'typical' mission day based on levels of weapons releases during past Maritime WSEP activities; and Category C, which represents munitions with smaller explosive weights and surface detonations only), and estimated the number of days each category will be executed during the 2017 Maritime WSEP missions (See Table 1–3 in Eglin AFB's application for the Mission Day Scenarios). Table 4 below provides the categorization of mission days (Table 1–3 in Eglin AFB's application), and Table 5 provides the maximum range of effects for all criteria and thresholds for mission-day Categories A, B, and C. These ranges were calculated based on explosive acoustic characteristics, sound propagation, and sound transmission loss in the study area (which incorporates water depth, sediment type, wind speed, bathymetry, and temperature/salinity profiles). Refer to Appendix A of Eglin AFB's application for a complete description of the acoustic modeling methodology used in the analysis.

TABLE 4—LIVE MUNITIONS CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions/day	Mission days/year	Total munitions/year
A	GBU–10/–24/–31	945	Subsurface (10′ depth)	1	2	2
	GBU–49	500	Surface	2		4
	JASSM	255	Surface	2		4
	GBU–12 (PWII)/–54 (LJDAM)/–38/–32 (JDAM).	192	Subsurface (10′ depth)	3		6
B	AGM–65 (Maverick)	86	Surface	2	4	8
	CBU–105 (WCMD)	83	Airburst	1		4
	GBU–39 (Small Diameter Bomb)	37	Surface	1		4
	AGM–114 (Hellfire)	20	Subsurface (10′ depth)	5		20
C	AGM–176 (Griffin)	13	Surface	5	2	10
	2.75 rockets or AGR–20A/B	12	Surface	50		100
	AIM–9X	7.9	Surface	1		2
	PGU–12 HEI 30 mm	0.1	Surface	500		1,000

TABLE 5—CRITERIA AND THRESHOLD RADII (IN METERS) FOR MARITIME WSEP MISSION-DAY CATEGORIES

Mission-day category	Level A harassment	Level B harassment	
	PTS	TTS	Behavioral
	185 dB SEL	170 dB SEP	165 dB SEL
A	945	4,666	7,479
B	248	2,225	3,959

TABLE 5—CRITERIA AND THRESHOLD RADII (IN METERS) FOR MARITIME WSEP MISSION-DAY CATEGORIES—Continued

Mission-day category	Level A harassment	Level B harassment	
	PTS	TTS	Behavioral
	185 dB SEL	170 dB SEP	165 dB SEL
C	286	1,128	1,863

Mortality and slight lung injury threshold ranges would extend from 47 to 216 m and 84 to 595 m, respectively, depending on the mission-day category. These ranges would fall within the Level A harassment ranges. Based on the planned activities on a given mission day, and the ranges presented in Table 5, Eglin AFB will ensure that the area equating to the Level A harassment threshold range is free of protected species. By clearing the Level A harassment threshold range of protected species, animals that may enter the area after the completed pre-mission surveys but prior to detonation would not reach the smaller slight lung injury or mortality zones as explained above. Because of human safety issues, Eglin AFB will require PSOs to leave the test area at least 30 minutes in advance of live weapon deployment and move to a position on the safety zone periphery, approximately 15 km (9.5 mi) from the detonation point. PSOs will continue to scan for marine mammals from the periphery, but effectiveness will be limited as the boat will remain at a designated station.

Video Monitoring: In addition to vessel-based monitoring, Eglin AFB will position three high-definition video cameras on the GRATV anchored on-site, as described earlier, to allow for real-time monitoring for the duration of the mission. The camera configuration and actual number of cameras used will depend on specific mission requirements. In addition to monitoring the area for mission objective issues, the camera(s) will also monitor for the presence of protected species. A trained marine species observer from Eglin Natural Resources will be located in Eglin AFB's Central Control Facility, along with mission personnel, to view the video feed before and during test activities. The distance to which objects can be detected at the water surface by use of the cameras is considered generally comparable to that of the human eye.

The GRATV will be located about 183 m (600 ft) from the target. The mortality threshold ranges correspond to the modified Goertner model adjusted for the weight of an Atlantic spotted dolphin calf, and extend from 0 to 216 m (0 to 709 ft) from the target, depending on the ordnance, and the Level A ranges for both common bottlenose and Atlantic spotted dolphins extend up to 945 m (3,100 ft) from the target, depending on the ordnance and harassment criterion. Given these distances, observers can reasonably be expected to view a substantial portion of the mortality zone in front of the camera, although a small portion would be behind or to the side of the camera view. Based on previous monitoring reports for this activity, the pre-training surveys for delphinids and other protected species within the mission area are effective. PSOs can view some portion of the Level A harassment zone, although the view window will be less than that of the mortality zone (a large percentage will be behind or to the side of the camera view).

In addition to the two types of visual monitoring discussed earlier in this section, Eglin AFB personnel will be present within the mission area (on boats and on the GRATV) on each day of testing well in advance of weapon deployment, typically near sunrise. They will perform a variety of tasks including target preparation, equipment checks, etc., and will opportunistically observe for marine mammals and indicators as feasible throughout test preparation. However, we consider these observations as supplemental to the mitigation and monitoring and will only occur as time and schedule permits. Eglin AFB personnel will relay information on these types of sightings to the Lead Biologist, as described in the following mitigation sections.

Pre-Mission Monitoring

The purposes of pre-mission monitoring are to: (1) Evaluate the mission site for environmental suitability, and (2) verify that the ZOI is free of visually detectable marine mammals, as well as potential indicators of these species. On the morning of the mission, the Test Director and Safety Officer will confirm that there are no issues that will preclude mission execution and that weather is adequate to support mitigation measures.

Sunrise or Two Hours Prior to Mission

Eglin AFB range clearing vessels and protected species survey vessels will be on site at least two hours prior to the mission. The Lead Biologist on board one survey vessel will assess the overall suitability of the mission site based on environmental conditions (sea state) and presence/absence of marine mammal indicators. Eglin AFB personnel will communicate this information to Tower Control and personnel will relay the information to the Safety Officer in Central Control Facility.

One and One-Half Hours Prior to Mission

Vessel-based surveys will begin approximately one and one-half hours prior to live weapons deployment. Surface vessel PSOs will survey the ZOI and relay all marine species and indicator sightings, including the time of sighting, GPS location, and direction of travel, if known, to the Lead Biologist. The Lead Biologist will document all sighting information on report forms that he/she will submit to Eglin Natural Resources after each mission. Surveys will continue for approximately one hour. During this time, Eglin AFB personnel in the mission area will also observe for marine species as feasible. If marine mammals or indicators are observed within the ZOI for that day's mission activities, the range will be declared ''fouled,'' a term that signifies to mission personnel that conditions are such that a live ordnance drop cannot occur (*e.g.,* protected species or civilian vessels are in the mission area). If there are no observations of marine mammals or indicators of marine mammals, Eglin AFB will declare the range clear of protected species.

One-Half Hour Prior to Mission

At approximately 30 minutes prior to live weapon deployment, marine species PSOs will be instructed to leave the mission site and remain outside the safety zone, which on average will be 15.28 km (9.5 mi) from the detonation point. The actual size is determined by weapon net explosive weight and method of delivery. The survey team will continue to monitor for protected

species while leaving the area. As the survey vessels leave the area, marine species monitoring of the immediate target areas will continue at the Central Control Facility through the live video feed received from the high definition cameras on the GRATV. Once the survey vessels have arrived at the perimeter of the safety zone (approximately 30 minutes after leaving the area per instructions from Eglin AFB, depending on actual travel time), Eglin AFB will declare the range as ''green'' and the mission will proceed, assuming all non-participating vessels have left the safety zone as well.

Execution of Mission

Immediately prior to live weapons drop, the Test Director and Safety Officer will communicate to confirm the results of marine mammal surveys and the appropriateness of proceeding with the mission. The Safety Officer will have final authority to proceed with, postpone, or cancel the mission. Eglin AFB will postpone the mission if:

- Any of the high-definition video cameras are not operational for any reason;
- Any marine mammal is visually detected within the ZOI. Postponement will continue until the animal(s) that caused the postponement is: (1) Confirmed to be outside of the ZOI and heading away from the targets; or (2) not seen again for 30 minutes and presumed to be outside the ZOI due to the animal swimming out of the range;
- Any large schools of fish or large flocks of birds feeding at the surface are within the ZOI. Postponement will continue until Eglin AFB personnel confirm that these potential indicators are outside the ZOI:
- Any technical or mechanical issues related to the aircraft or target boats; or
- Any non-participating vessel enters the human safety zone prior to weapon release.

In the event of a postponement, protected species monitoring will continue from the Central Control Facility through the live video feed. Observers will also continue to monitor from the vessels at the safety perimeter, with limited effectiveness due to the distance from the detonation site.

Post-Mission Monitoring

Post-mission monitoring determines the effectiveness of pre-mission mitigation by reporting sightings of any marine mammals. Post-detonation monitoring surveys will commence once the mission has ended or, if required, as soon as personnel declare the mission area safe. Vessels will move into the survey area from outside the safety zone and monitor for at least 30 minutes, concentrating on the area down-current of the test site. This area is easily identifiable because of the floating debris in the water from impacted targets. Up to 10 Eglin AFB support vessels will be cleaning debris and collecting damaged targets from this area thus spending several hours in the area once Eglin AFB completes the mission. PSOs will document and report any marine mammal species, number, location, and behavior of any animals observed to Eglin Natural Resources.

Mission Delays Due to Weather

Eglin AFB will delay or reschedule Maritime WSEP missions if the Beaufort sea state is greater than number 4 at the time of the testing activities. The Lead Biologist aboard one of the survey vessels will make the final determination of whether conditions are conducive for sighting protected species or not.

We have carefully evaluated Eglin AFB's mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal);
2. A reduction in the numbers of marine mammals (total number or number at biologically important times or locations) exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);
3. A reduction in the number of times (total number or number at biologically important times or locations) individuals will be exposed to stimuli that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only);
4. A reduction in the intensity of exposures (either total number or number at biologically important times or locations) to training exercises that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only);
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time; and
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Eglin AFB's mitigation measures, as well as other measures that may be relevant to the specified activity, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance (while also considering personnel safety, practicality of implementation, and the impact of effectiveness of the military readiness activity).

Monitoring and Reporting

In order to issue an Authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Eglin AFB submitted a marine mammal monitoring plan in their Authorization application. NMFS has not modified or supplemented the plan based on comments or new information received from the public during the public comment period. Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in action area (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological);

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock;

• Effects on marine mammal habitat and resultant impacts to marine mammals; and

• Mitigation and monitoring effectiveness.

The Authorization for Maritime WSEP operations will require the following measures:

(1) Eglin AFB will track the use of the EGTTR for test firing missions and protected species observations through the use of mission reporting forms;

(2) Eglin AFB will submit a summary report of marine mammal observations and Maritime WSEP activities to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources 90 days after expiration of the current Authorization. This report must include the following information: (i) Date and time of each Maritime WSEP exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of Maritime WSEP exercises on marine mammal populations; and (iii) results of the Maritime WSEP exercise monitoring, including number of marine mammals (by species) that may have been harassed due to presence within the activity zone;

(3) Eglin AFB will monitor for marine mammals in the action area. If Eglin AFB personnel observe or detect any dead or injured marine mammals prior to testing, or detects any injured or dead marine mammals during live fire exercises, Eglin AFB must cease operations and submit a report to NMFS within 24 hours; and

(4) Eglin AFB must immediately report any unauthorized takes of marine mammals (*i.e.,* serious injury or mortality) to NMFS and to the respective Southeast Region stranding network representative. Eglin AFB must cease operations and submit a report to NMFS within 24 hours.

Monitoring Results From Previously Authorized Activities

Eglin AFB complied with the mitigation and monitoring required under the previous Authorization for 2016 Maritime WSEP activities. Marine mammal monitoring occurred before, during, and after each Maritime WSEP mission. During the course of these activities, Eglin AFB's monitoring reports showed that they did not exceed the take levels authorized. In accordance with the 2015 Authorization, Eglin AFB submitted a monitoring report (available at: *www.nmfs.noaa.gov/pr/permits/incidental/military.htm*).

Under the 2016 Authorization, Eglin AFB anticipated conducting Maritime WSEP training missions over approximately two to three weeks, but actually conducted a total of five mission days (February 11 and March 14–17) associated with live ordnance delivery. Due to weather conditions and high sea states, no live missions were conducted February 8–10. Munitions that were actually dropped accounted for only approximately 41 percent of what was authorized in the 2016 Authorization.

During the February 2016 mission, Eglin AFB released one AGM–65 Maverick. The AGM–65 Maverick is a penetrating blast-fragment warhead that detonates at the surface and has 86 lb NEW. Eglin AFB conducted the required monitoring for marine mammals or indicators of marine mammals (*e.g.,* flocks of birds, baitfish schools, or large fish schools) before, during, and after each mission and observed a mixture of six bottlenose and spotted dolphins approximately seven miles outside of the largest ZOI, so no action was required. No protected species were observed within the ZOI during pre-mission surveys, mission activities, or during post-mission surveys. Therefore, the mission resulted in no acoustic impacts to marine mammals.

During the March 2016 live fire missions, Eglin AFB expended two AGM–65 Mavericks and twelve AGM–114 Hellfire missiles. The NEW of the munitions that detonated at the water surface or up to 3 m (10 ft) below the surface are 86 lb for the AGM–65 Maverick missiles and 13 lb for the AGM–114 Hellfire missiles. Eglin AFB conducted the required monitoring for marine mammals or indicators of marine mammals (*e.g.,* flocks of birds, baitfish schools, or large fish schools) before, during, and after each mission and observed two species of marine mammals: The common bottlenose dolphin and Atlantic spotted dolphin; one sea turtle; and two flocks of approximately 10–20 birds on two separate occasions (upon investigation there was no evidence of protected species associated with either flock of birds). Eglin AFB confirmed that all protected species observed were outside of the ZOI at the conclusion of each pre-mission survey.

After each mission, Eglin AFB re-entered the ZOI to begin post-mission surveys for marine mammals and debris clean-up operations. Eglin AFB personnel did not observe reactions indicative of disturbance during the pre-mission surveys and did not observe any marine mammals during the post-mission surveys. In summary, Eglin AFB reports that no observable instances of take of marine mammals occurred incidental to the Maritime WSEP training activities under the 2016 Authorization.

Estimated Numbers of Marine Mammals Taken by Harassment

This section includes an estimate of the number of incidental ''takes'' proposed for authorization pursuant to this Authorization, which will inform both NMFS negligible impact determination. Harassment is the means of take expected to result from these activities, and the definition of harassment as it applies to a ''military readiness activity'' is: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

NMFS' analysis identified the physiological responses and behavioral responses that could potentially result from exposure to underwater explosive detonations. In this section, we will relate the potential effects to marine mammals from underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B harassment. This section will also quantify the effects that might occur from the military readiness activities in W–151.

At NMFS' recommendation, Eglin AFB updated the thresholds used for onset of TTS (Level B Harassment) and onset of PTS (Level A Harassment) to be

consistent with the thresholds outlined in NMFS' August 2016 ''Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing'' (NMFS 2016). NMFS believes that the thresholds outlined in the new Technical Guidance represent the best available science. The report is available on the internet at: *www.nmfs.noaa.gov/pr/acoustics/Acoustic%20Guidance%20Files/opr-55_acoustic_guidance_tech_memo.pdf.*

Level B Harassment

Of the potential effects described earlier in this document, the following are the types of effects that fall into the Level B harassment category:

Behavioral Harassment

Behavioral disturbance that rises to the level described in the above definition, when resulting from exposures to non-impulsive or impulsive sound, is Level B harassment. Some of the lower level physiological stress responses discussed earlier will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When predicting Level B harassment based on estimated behavioral responses, we are aware that those takes may have a stress-related physiological component.

Temporary Threshold Shift

As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. NMFS classifies TTS (when resulting from exposure to explosives and other impulsive sources) as Level B harassment, not Level A harassment (injury).

Level A Harassment

Of the potential effects that were described earlier, the following are the types of effects that fall into the Level A Harassment category:

Permanent Threshold Shift

PTS (resulting either from exposure to explosive detonations) is irreversible and NMFS considers this to be an injury.

Acoustic Thresholds

Table 6 outlines the acoustic thresholds for mid-frequency cetaceans used by NMFS for this Authorization when addressing noise impacts from explosives. Both common bottlenose dolphins and Atlantic spotted dolphins are considered mid-frequency cetaceans.

TABLE 6—IMPULSIVE SOUND EXPLOSIVE THRESHOLDS USED BY EGLIN AFB IN ITS CURRENT ACOUSTICS IMPACTS MODELING

Group	Level B harassment		Level A harassment			Mortality
	Behavioral	TTS	PTS	Gastro-intestinal tract	Lung	
Mid-frequency Cetaceans.	165 dB SEL	170 dB SEL	185 dB SEL	237 dB SPL	39.1 $M^{1/3}$ $(1+[D_{Rm}/10.081])^{1/2}$ Pa-sec. Where: M = mass of the animals in kg. D_{Rm} = depth of the receiver (animal) in meters.	91.4 $M^{1/3}$ $(1+D_{Rm}/10.081])^{1/2}$ Pa-sec. Where: M = mass of the animals in kg. D_{Rm} = depth of the receiver (animal) in meters.

TTS = temporary threshold shift; PTS = permanent threshold shift; dB = decibels; SEL = sound exposure level; SPL = sound pressure level.

Table 7 provides the estimated maximum range or radius, from the detonation point to the various thresholds described in Tables 4–6 (Note: For PTS and TTS dual metrics, the more conservative metric was used).

TABLE 7—DISTANCES (m) TO HARASSMENT THRESHOLDS FROM EGLIN AFB'S EXPLOSIVE ORDNANCE

Mission-day category	Mortality	Level A harassment				Level B harassment		
	Modified Goertner Model 1	Slight lung injury	GI tract injury	PTS		TTS		Behavioral
		Modified Goertner Model 2	237 dB SPL	185 dB SEL	230 dB Peak SPL	170 dB SEL	224 dB SPL	165 dB SEL
Bottlenose dolphin:								
A	193	534	180	945	705	4,666	1,302	7,479
B	110	180	156	248	180	2,225	180	3,959
C	37	73	83	286	169	1,128	180	1,863
Atlantic spotted dolphin:								
A	216	595	180	945	705	4,666	1,302	7,479
B	136	180	156	248	180	2,225	180	3,959
C	47	84	83	286	169	1,128	180	1,863

dB = decibels; GI = gastrointestinal; SEP = sound exposure level; SPL = sound pressure level; PTS = permanent threshold shift; TTS = temporary threshold shift.

The ranges presented above were used to calculate the ZOI for each criterion/threshold. To eliminate double counting of takes, impact areas from higher impact categories (*e.g.,* PTS) were subtracted from areas associated with lower impact categories (*e.g.,* TTS). The estimated number of marine mammals potentially exposed to the various

impact thresholds was calculated with a two-dimensional approach using the product of the adjusted impact area, animal density, and annual number of events for each mission-day category. A take is considered to occur for sound exposure level (SEL) metrics if the received level is equal to or above the associated threshold within the appropriate frequency band of the sound received, adjusted for the appropriate weighting function value of that frequency band. Similarly, a take would occur for impulse and peak SPL metrics if the received level is equal to or above the associated threshold.

Density Estimation

Density estimates for bottlenose dolphin and spotted dolphin were obtained from Duke University Marine Geospatial Ecology Lab Reports (Roberts *et al.,* 2016). Raster data from Duke University were imported into ArcGIS and overlaid onto the Maritime WSEP mission area. Density values were provided in 100 km^2 boxes. A 30-km by 30-km (900 km^2) area centered on the Maritime WSEP mission location was selected, which consisted of nine 100-km^2 blocks. Density values from those blocks were averaged and converted to number of animals per square kilometer to obtain average annual density estimates for the common bottlenose and Atlantic spotted dolphins used in this analysis (see Table 8 for the resultant densities for these species).

TABLE 8—MARINE MAMMAL DENSITY ESTIMATES WITHIN EGLIN AFB'S EGTTR

Species	Density (animals/km^2)
Bottlenose dolphin	0.433
Atlantic spotted dolphin	0.148

Take Estimation

Table 9 indicates the modeled potential for lethality, injury, and non-injurious harassment (including behavioral harassment) to marine mammals in the absence of mitigation measures. Eglin AFB and NMFS estimate that approximately three marine mammals could be exposed to injurious Level A harassment noise levels (187 dB SEL) and approximately 326 animals could be exposed to Level B harassment (TTS and behavioral harassment) noise levels in the absence of mitigation measures.

TABLE 9—MODELED NUMBER OF MARINE MAMMALS POTENTIALLY AFFECTED BY MARITIME WSEP OPERATIONS

Species	Mortality	Level A harassment (PTS and slight lung injury)	Level B harassment (TTS)	Level B harassment (behavioral)
Bottlenose dolphin	0	2	87	157
Atlantic spotted dolphin	0	1	29	53
Total	0	3	116	210

Based on the mortality exposure estimates calculated by the acoustic model and the anticipated effectiveness of mitigation measures, zero marine mammals are expected to be affected by pressure levels associated with mortality or serious injury. Zero marine mammals are expected to be exposed to pressure levels associated with gastrointestinal tract injury.

NMFS generally considers PTS to fall under the injury category (Level A Harassment). An animal would need to stay very close to the sound source for an extended amount of time to incur a serious degree of PTS, which could increase the probability of mortality. In this case, it would be highly unlikely for this scenario to unfold given the nature of any anticipated acoustic exposures that could potentially result from a mobile marine mammal that NMFS generally expects to exhibit avoidance behavior to loud sounds within the EGTTR. NMFS concludes that possibility of minor PTS in the form of slight upward shift of hearing threshold at certain frequency bands by a few individuals of marine mammals is low, but not unlikely. The majority of the incidental 'takes' resulting from Eglin AFB's WSEP activities will consist of Level B harassment, such as TTS and behavioral responses.

Negligible Impact Analysis Determinations

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, populations size, growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion below applies to each of the species for which we authorize incidental take for Eglin AFB's activities, given that expected impacts are expected to be the same for both species.

In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, Eglin AFB's specified activities are not likely to cause long-term behavioral disturbance, serious injury, or death.

The takes from Level B harassment will be due to potential behavioral disturbance and TTS. The takes from Level A harassment will be due to some, likely lesser, degree of PTS and slight lung injury. Activities will only occur over a timeframe of two to three weeks beginning in February 2017, with one or two missions occurring per day. It is possible that some individuals may be taken more than once if those individuals are located in the exercise area on two different days when exercises are occurring.

Noise-induced threshold shifts (TS, which includes PTS) are defined as increases in the threshold of audibility (*i.e.,* the sound has to be louder to be detected) of the ear at a certain frequency or range of frequencies (ANSI 1995; Yost 2000). Several important factors relate to the magnitude of TS, such as level, duration, spectral content (frequency range), and temporal pattern (continuous, intermittent) of exposure (Yost 2000; Henderson *et al.,* 2008). TS occurs in terms of frequency range (Hz or kHz), hearing threshold level (dB), or both frequency and hearing threshold level (CDC 2004).

In addition, there are different degrees of PTS ranging from slight/mild to moderate and from severe to profound (Clark 1981). Profound PTS or the complete loss of the ability to hear in one or both ears is commonly referred to as deafness (CDC 2004; WHO 2006). High-frequency PTS, presumably as a normal process of aging that occurs in humans and other terrestrial mammals, has also been demonstrated in captive cetaceans (Ridgway and Carder 1997; Yuen *et al.,* 2005; Finneran *et al.,* 2005; Houser and Finneran 2006; Finneran *et al.,* 2007; Schlundt *et al.,* 2011) and in stranded individuals (Mann *et al.,* 2010).

In terms of what is analyzed for the potential PTS (Level A harassment) in marine mammals as a result of Eglin AFB's Maritime WSEP operations, if it occurs, NMFS has determined that the levels will be slight/mild because most cetaceans would be expected to show relatively high levels of avoidance. Further, it is uncommon to sight marine mammals within the target area, especially for prolonged durations. Results from monitoring programs associated other Eglin AFB activities and for Eglin AFB's 2016 Maritime WSEP activities have shown the absence of marine mammals within the EGTTR during and after maritime operations. Avoidance varies among individuals and depends on their activities or reasons for being in the area.

NMFS' predicted estimates for Level A harassment take are likely overestimates of the likely injury that will occur. NMFS expects that successful implementation of the required vessel-based and video-based mitigation measures will avoid Level A take in some instances. Also, NMFS expects that some individuals will avoid the source at levels expected to result in injury. Nonetheless, although NMFS expects that Level A harassment is unlikely to occur at the numbers authorized, because it is difficult to quantify the degree to which the mitigation and avoidance will reduce the number of animals that might incur PTS, we are authorizing the modeled number of Level A takes (three), which does not take mitigation or avoidance into consideration. However, we anticipate that any PTS incurred because of mitigation and the likely short duration of exposures, will be in the form of only a small degree of PTS and not total deafness.

While animals may be impacted in the immediate vicinity of the activity, because of the short duration of the actual individual explosions themselves (versus continual sound source operation) combined with the short duration of the Maritime WSEP operations, NMFS has determined that there will not be a substantial impact on marine mammals or on the normal functioning of the nearshore or offshore Gulf of Mexico ecosystems. We do not expect that the activity will impact rates of recruitment or survival of marine mammals since, among other factors listed below, we do not expect mortality (which would remove individuals from the population) or serious injury to occur. In addition, the activity will not occur in areas (and/or times) of significance for the marine mammal populations potentially affected by the exercises (*e.g.,* feeding, resting, or reproductive areas), and the activities will only occur in a small part of their overall range, so the impact of any potential temporary displacement will be negligible and animals are expected to return to the area after the cessation of activities. Although the activity could result in Level A (PTS or slight lung injury, not gastrointestinal tract injury) and Level B (behavioral disturbance and TTS of lesser degree and shorter duration) harassment of marine mammals, the level of harassment is not anticipated to impact rates of recruitment or survival of marine mammals because the number of exposed animals is expected to be low due to the short-term (*i.e.,* four hours a day or less) and site-specific nature of the activity. We do not anticipate that the effects will be detrimental to rates of recruitment and survival because we do not expect serious extended behavioral responses that would result in energetic effects at the level to impact fitness.

Moreover, the mitigation and monitoring measures for the Authorization (described earlier in this document) are expected to further minimize the potential for harassment. The protected species surveys will require Eglin AFB to search the area for marine mammals, and if any are found in the live fire area, then the exercise will be suspended until the animal(s) has left the area. Moreover, marine species observers located in the Eglin control tower will monitor the high-definition video feed from cameras located on the instrument barge anchored on-site for the presence of protected species. Furthermore, Maritime WSEP missions will be delayed or rescheduled if the sea state is greater than a 4 on the Beaufort Scale at the time of the test. In addition, Maritime WSEP missions will occur no earlier than two hours after sunrise and no later than two hours prior to sunset to ensure adequate daylight for pre- and post-mission monitoring.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Eglin AFB's Maritime WSEP operations will result in the incidental take of marine mammals, by Level A and Level B harassment, but that the taking from the Maritime WSEP exercises will not have an adverse effect on annual rates of recruitment or survival, and therefore will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of

affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Due to the location of the activity and past experience with similar authorizations for these activities, no ESA-listed marine mammal species are likely to be affected. Therefore, NMFS has determined that this Authorization will have no effect on ESA-listed species and has determined that a section 7 consultation under the ESA is not required for the issuance of an MMPA Authorization to Eglin AFB.

National Environmental Policy Act (NEPA)

In 2015, Eglin AFB provided NMFS with an EA titled Maritime Weapon Systems Evaluation Program (WSEP) Operational Testing in the Eglin Gulf Testing and Training Range (EGTTR), Florida. The EA analyzed the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals. NMFS, after review and evaluation of the Eglin AFB EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopted the EA. After considering the EA, the information in the 2014 Authorization application, and the **Federal Register** notice, as well as public comments, NMFS' issuance of the 2015 Authorization and determination that the activity was not likely to result in significant impacts on the human environment, NMFS adopted Eglin AFB's EA under 40 CFR 1506.3; and issued a FONSI statement on issuance of an Authorization under section 101(a)(5) of the MMPA.

In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS will again review the information contained in Eglin AFB's EA and determine whether the EA accurately and completely describes the preferred action alternative and the potential impacts on marine mammals. Based on this review and analysis, NMFS has reaffirmed 2015 FONSI statement on issuance of an annual authorization under section 101(a)(5) of the MMPA.

Authorization

As a result of these determinations, NMFS has issued an Incidental Harassment Authorization to Eglin AFB for conducting Maritime WSEP activities, for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 9, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–02970 Filed 2–14–17; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2017–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Truth In Lending Act (Regulation Z)—Appraisals for Higher-Priced Mortgage Loans.''

DATES: Written comments are encouraged and must be received on or before March 17, 2017 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Truth In Lending Act (Regulation Z)—Appraisals for Higher-Priced Mortgage Loans.

OMB Control Number: 3170–0026.

Type of Review: Extension without change of currently approved collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 2,047.

Estimated Total Annual Burden Hours: 516.

Abstract: The Truth in Lending Act requires creditors originating mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage (higher-risk mortgage loans) to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of appraisals, and give applicants a copy of written appraisals used.

This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on November 11, 2016, 81 FR 76924, Docket Number: CFPB–2016–0046. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the

assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2017–03008 Filed 2–14–17; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (CFPB or Bureau). The notice also describes the functions of the Board. Notice of the meeting is permitted by section 9 of the CAB Charter and is intended to notify the public of this meeting.

DATES: The meeting date is Thursday, March 2, 2017, 10:30 a.m. to 4:30 p.m. eastern standard time.

ADDRESSES: The meeting location is the Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov,* Consumer Advisory Board and Councils Office, External Affairs, 1275 First Street NE., Washington, DC 20002.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9(d) of the CAB Charter states:

(1) Each meeting of the Board shall be open to public observation, to the extent that a facility is available to accommodate the public, unless the Bureau, in accordance with paragraph (4) of this section, determines that the meeting shall be closed. The Bureau also will make reasonable efforts to make the meetings available to the public through live web streaming. (2) Notice of the time, place and purpose of each meeting, as well as a summary of the proposed agenda, shall be published in the **Federal Register** not more than 45 or less than 15 days prior to the scheduled meeting date. Shorter notice may be given when the Bureau determines that the Board's business so requires; in such event, the public will be given notice at the earliest practicable time. (3) Minutes of meetings, records, reports, studies, and agenda of the Board shall be posted on the Bureau's Web site (*www.consumerfinance.gov*). (4) The Bureau may close to the public a portion of any meeting, for confidential discussion. If the Bureau closes a meeting or any portion of a meeting, the Bureau will issue, at least annually, a summary of the Board's activities during such closed meetings or portions of meetings.

Section 1014(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (*http://files.consumerfinance.gov/f/201501_cfpb_charter-of-the-consumer-advisory-board.pdf*) (Dodd-Frank Act) provides:

The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(a) The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Act (*http://files.consumerfinance.gov/f/201501_cfpb_charter-of-the-consumer-advisory-board.pdf*), which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.'' (b) To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services. (c) The Board will also be available to advise and consult with the Director and the Bureau on other matters related to the Bureau's functions under the Dodd-Frank Act.

II. Agenda

The Consumer Advisory Board will discuss the consumer credit information marketplace, a review of Bureau enforcement actions, trends and themes in consumer financial markets, and enhancements to the CFPB Consumer Complaint Database.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Individuals who wish to attend the Consumer Advisory Board meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, March 1, 2017. Members of the public must RSVP by the due date and must include ''CAB'' in the subject line of the RSVP.

III. Availability

The Board's agenda will be made available to the public on February 15, 2017, via *www.consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the CFPB's Web site *www.consumerfinance.gov.*

Dated: February 9, 2017.

Leandra English,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2017–03034 Filed 2–14–17; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for U.S. Army Owned Invention to Savit Corporation

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces that, unless there is an objection, after 15 days it contemplates granting an exclusive license to Savit Corporation, Rockaway, New Jersey for U.S. patents 8,161,883 ''Flash-Bang Grenade with Greater Flash Intensity'', and D642,235 ''Housing for Flash-Bang Grenade.'' Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

DATES: Objections must be received within 15 days of this Notice.

ADDRESSES: Send written objections to Timothy Ryan, U.S. Army ARDEC,

ATTN: RDAR–EIB (Bldg 93), Picatinny Arsenal, NJ 07806–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Ryan, email: *timothy.s.ryan.civ@mail.mil;* (973) 724–7953.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–03043 Filed 2–14–17; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: Wednesday, March 22, 2017, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CAPT Edward Norton, DFO, Uniform Formulary Beneficiary Advisory Panel, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Telephone: (703) 681–2890. Fax: (703) 681–1940. Email Address: *dha.ncr.health-it.mbx.baprequests@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (Title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended).

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda:

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Antibiotics—Tetracyclines
   b. Hepatitis C Agents—Direct Acting Antivirals
5. Recently Approved Drugs Review
6. Pertinent Utilization Management Issues
7. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 8:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *http://facadatabase.gov/.* Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: February 10, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–03023 Filed 2–14–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. 3951

AGENCY: Office of the Under Secretary (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 3951, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. Applying the inflation adjustment for 2016, the maximum monthly rental amount for 50 U.S.C. App. 3951 (a)(1)(A)(ii) as of January 1, 2017, will be $3,584.99.

DATES: *Effective Date:* January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Lt Col Reggie D. Yager, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 571–9301.

Dated: February 10, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–03033 Filed 2–14–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee.

DATES: Tuesday, March 7, 2017 at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street NW., Washington, DC 20442–0001, telephone (202) 761–1448.

SUPPLEMENTARY INFORMATION: The Code Committee was established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street NW., Washington, DC 20442–0001, at 10:00 a.m. on Tuesday, March 7, 2017. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

Dated: February 9, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–03005 Filed 2–14–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Vietnam War Commemoration Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Vietnam War Commemoration Advisory Committee. This meeting is open to the public.

DATES: The public meeting of the Vietnam War Commemoration Advisory Committee (hereafter referred to as ''the Committee'') will be held on Tuesday, March 7, 2017. The meeting will begin at 1:30 p.m. and end at 3:30 p.m.

ADDRESSES: 241 18th Street South, Room 101, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer: The committee's Designated Federal Officer is Mrs. Marcia Moore, Vietnam War Commemoration Advisory Committee, 241 18th Street South, Arlington, VA 22202, *marcia.l.moore12.civ@mail.mil,* 703–571–2005. For meeting information please contact Mrs. Moore or Mr. Mark Franklin, *mark.r.franklin.civ@mail.mil,* 703–697–4849; or Ms. Scherry Chewning, *scherry.l.chewning.civ@mail.mil,* 703–697–4908.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Committee will convene and receive an introduction to the Conceptual Plan for the Vietnam War 50th Commemoration's 2018–2025 activities. Later this fiscal year, the Committee will provide advice to the DoD on what resources and thematic events should be offered to over 10,000 Commemorative Partners to honor Vietnam War Veterans over the next seven years.

Availability of Materials for the Meeting: A copy of the agenda and handouts for this meeting may be obtained from the Committee's Web site at *http://vietnamwar50th.com.* Copies will also be available at the meeting.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. All members of the public who wish to attend the public meeting must contact Mrs. Marcia Moore, Mr. Mark Franklin, or Ms. Scherry Chewning at the number listed in the **FOR FURTHER INFORMATION CONTACT** section by February 28, 2017.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mrs. Marcia Moore, Mr. Mark Franklin or Ms. Scherry Chewning at the number listed in the **FOR FURTHER INFORMATION CONTACT** section by February 28, 2017 so that appropriate arrangements can be made.

Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO by February 28, 2017. Written comments should be submitted via email to the address for the DFO given in the **FOR FURTHER INFORMATION CONTACT** section in either Adobe Acrobat or Microsoft Word format. Please note that since the Committee operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Committee's Web site.

Dated: February 9, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–03001 Filed 2–14–17; 8:45 am]

BILLING CODE 5001–06–P?≤

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Public Scoping, Request for Comment, and Announcement of Public Scoping Meetings for the U.S. Department of Energy Environmental Assessment for New England Aqua Ventus I (DOE/EA–2049)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public scoping, request for comment, and announcement of public scoping meetings.

SUMMARY: The U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is proposing to authorize the expenditure of federal funding for the development of New England Aqua Ventus I, an offshore wind advanced technology demonstration project consisting of two turbines on floating foundations in the Gulf of Maine, approximately 2.5 miles south of Monhegan Island, Lincoln County, Maine and 12 miles off the mainland. Development actions include design, construction, and commissioning of the proposed project; environmental monitoring; and up to five years of post-construction structural and performance monitoring data collection by the University of Maine. This project is also known as the Maine Aqua Ventus I project. The proposed project would consist of up to two wind turbine

generators and the necessary electrical transmission facilities (*i.e.* underwater and underground cable) to connect to the Central Maine Power distribution line located in Port Clyde within the town of St. George, Maine. Additional project activities and/or potential impacts from the proposed project would occur in or near Hampden, Searsport, Monhegan Island, Port Clyde and Pemaquid, Maine. The operation, maintenance and eventual decommissioning of the proposed project are considered connected actions under the Council on Environmental Quality's *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act* and will be analyzed in this Environmental Assessment (EA) as part of the proposed action.

Pursuant to the requirements of the National Environmental Policy Act (NEPA), DOE is preparing an EA to identify and analyze potential impacts to the human environment that may occur if DOE authorizes the expenditure of federal funding in support of New England Aqua Ventus I. DOE is requesting public input on the scope of the EA for New England Aqua Ventus I.

The notice of public scoping for the EA, a description of the proposed project, and additional meeting information, including inclement weather delays or postponements, are posted at: *www.energy.gov/node/2053718.*

DATES:

Meetings: DOE will hold the following public meetings: February 28, 2017 from 2:00 p.m. to 4:00 p.m. and 7:00 p.m. to 9:00 p.m. in Tenants Harbor, Maine; and March 1, 2017 from 5:30 to 7:30 p.m. in Monhegan, Maine.

Comments: Comments regarding scoping must be received on or before March 22, 2017.

ADDRESSES:

Meetings: The public meetings will be held at (1) The Fire Department Meeting Room at the Town of St. George Office, 3 School Street, Tenants Harbor, Maine 04860 on February 28.

(2) Monhegan Island School, 1 Monhegan Avenue, Maine 04852 on March 1.

Written Comments: Written comments should be sent to Diana Heyder at U.S. Department of Energy, 15013 Denver West Parkway, Golden, CO 80401, or by email to *AquaVentus1EA@ee.doe.gov.*

Full Notice: The notice is available for viewing at: *www.energy.gov/node/2053718.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Diana Heyder at *AquaVentus1EA@ee.doe.gov.*

Issued in Golden, CO on February 7, 2017.

Robin L. Sweeney,

Director, Environment, Safety and Health Office, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2017–03040 Filed 2–14–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP13–492–000, CP13–483–000	1–19–2017	Climate Writers.
2. CP13–492–000, CP13–483–000	1–19–2017	Climate Writers.
3. CP15–138–000	1–23–2017	Natural Gas Supply Association.
4. CP15–177–000	1–26–2017	Ben Stodola.
5. P–1494–416	1–30–2017	Myirl J. Landers.
6. CP15–93–000	2–2–2017	Frederick P. Curran.
7. CP15–93–000	2–3–2017	Mass Mailing.[1]
Exempt:		
1. CP15–558–000	1–24–2017	U.S. House Representative Brian K. Fitzpatrick.
2. CP15–558–000	1–26–2017	U.S. House Representative Matt Cartwright.
3. CP17–11–000	1–26–2017	FERC Staff.[2]
4. ER17–284–000	2–1–2017	U.S. Congress Members.[3]
5. CP16–9–000	2–1–2017	U.S. Senators.[4]
6. CP15–554–000	2–2–2017	Loudoun County Chamber of Commerce.

Docket No.	File date	Presenter or requester
7. CP16–22–000	2–2–2017	U.S. Senator Gary C. Peters.
8. P–13102–000	2–3–2017	FERC Staff.[5]

[1] Nine letters have been sent to FERC Commissioners and staff under this docket number.
[2] Staff Memorandum dated January 26, 2017.
[3] Congressmen Debbie Dingell, John Moolenaar, Justin Amash, Paul Mitchell, Dave Trott, Sander M. Levin, Tim Walberg, Bill Huizenga, Brenda Lawrence, Mike Bishop, Jack Bergman, and Daniel T. Kildee.
[4] Senators Edward J. Markey and Elizabeth Warren.
[5] Custom Soil Resource Report dated January 19, 2017, prepared by U.S. Department of Agriculture, Natural Resources Conservation Service.

Dated: February 7, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–03000 Filed 2–14–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–57–000.

Applicants: Solar Star Oregon II, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Solar Star Oregon II, LLC.

Filed Date: 2/9/17.

Accession Number: 20170209–5148.

Comments Due: 5 p.m. ET 3/2/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–953–000.

Applicants: South Central MCN LLC.

Description: § 205(d) Rate Filing: South Centeral MCN LLC Rate Schedule Change to be effective 4/1/2016.

Filed Date: 2/9/17.

Accession Number: 20170209–5120.

Comments Due: 5 p.m. ET 3/2/17.

Docket Numbers: ER17–954–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–02–09_SA 2997 Palo Alto Wind-MidAmerican GIA (J529/J590) to be effective 1/25/2017.

Filed Date: 2/9/17.

Accession Number: 20170209–5152.

Comments Due: 5 p.m. ET 3/2/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 9, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–03004 Filed 2–14–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–580–000.

Applicants: RET Modesto Solar LLC.

Description: Supplement to December 19, 2016 RET Modesto Solar LLC tariff filing (Notice of Change in Status).

Filed Date: 1/31/17.

Accession Number: 20170131–5432.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER17–582–001.

Applicants: Westside Solar, LLC.

Description: Tariff Amendment: Westside Solar, LLC Amendment to the Application for MBR Authority to be effective 2/17/2017.

Filed Date: 2/6/17.

Accession Number: 20170206–5194.

Comments Due: 5 p.m. ET 2/27/17.

Docket Numbers: ER17–583–001.

Applicants: Whitney Point Solar, LLC.

Description: Tariff Amendment: Whitney Point Solar, LLC Amendment to the Application for MBR Authority to be effective 2/17/2017.

Filed Date: 2/6/17.

Accession Number: 20170206–5196.

Comments Due: 5 p.m. ET 2/27/17.

Docket Numbers: ER17–944–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Second Revised Service Agreement No. 3276, Queue No. X1–012 to be effective 1/24/2017.

Filed Date: 2/7/17.

Accession Number: 20170207–5039.

Comments Due: 5 p.m. ET 2/28/17.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–7–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC.

Description: Amendment to October 28, 2016 Application of Mid-Atlantic Interstate Transmission, LLC for Authorization Under Section 204 of the Federal Power Act.

Filed Date: 2/3/17.

Accession Number: 20170203–5114.

Comments Due: 5 p.m. ET 2/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 7, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–02999 Filed 2–14–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1429–005.
Applicants: Emera Maine.
Description: Compliance filing: Refund Report—ER12–1650 & ER15–1429 to be effective N/A.
Filed Date: 2/9/17.
Accession Number: 20170209–5010.
Comments Due: 5 p.m. ET 3/2/17.

Docket Numbers: ER17–947–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA No. 690, Queue No. D07 to be effective 4/2/2002.
Filed Date: 2/8/17.
Accession Number: 20170208–5033.
Comments Due: 5 p.m. ET 3/1/17.

Docket Numbers: ER17–948–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement No. 4615; Queue No. AB1–138 to be effective 1/9/2017.
Filed Date: 2/8/17.
Accession Number: 20170208–5037.
Comments Due: 5 p.m. ET 3/1/17.

Docket Numbers: ER17–949–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2017–02–08 Metering Rules Enhancements Amendment to be effective 4/10/2017.
Filed Date: 2/8/17.
Accession Number: 20170208–5038.
Comments Due: 5 p.m. ET 3/1/17.

Docket Numbers: ER17–950–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT Schedule 12—Appdx and Appdx A re: ConEd Wheeling Termination to be effective 5/1/2017.
Filed Date: 2/8/17.
Accession Number: 20170208–5040.
Comments Due: 5 p.m. ET 3/1/17.

Docket Numbers: ER17–951–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL and JEA Agreement for Preliminary Engineering Design, et al., for Oneil-Nass to be effective 2/9/2017.
Filed Date: 2/9/17.
Accession Number: 20170209–5000.
Comments Due: 5 p.m. ET 3/2/17.

Docket Numbers: ER17–952–000.
Applicants: Delmarva Power & Light Company.
Description: § 205(d) Rate Filing: Construction Agreement with DMEC to be effective 2/9/2017.
Filed Date: 2/9/17.
Accession Number: 20170209–5001.
Comments Due: 5 p.m. ET 3/2/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 9, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–03003 Filed 2–14–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0751; FRL–9959–31–OW]

Extension of Public Comment Period: Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the *Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin.* In response to stakeholder requests, the comment period will be extended for an additional 31 days, from February 17, 2017 to March 20, 2017.

DATES: Comments must be received on or before March 20, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2016–0751, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Ravenscroft, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1101; email address: *ravenscroft.john@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 19, 2016 (81 FR 91929), EPA announced the availability of the *Draft Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin,* and opened a 60-day public review and comment period. During the comment period, EPA is soliciting additional scientific views, data, and information regarding the science and technical approach used in the derivation of the draft *Human Health Recreational Ambient Water Quality Criteria and/or Swimming Advisories for Microcystins and Cylindrospermopsin* document. EPA is proposing that these recommended criteria, if adopted by States or authorized Tribes as CWA section 303(c) WQS, be used for CWA section 303(d) assessment and listing purposes where the magnitude is not exceeded for more than 10 percent of days during a recreational season up to one calendar year as an indicator of long-term impairment from multiple short-term blooms. EPA is soliciting public comment on this 10 percent exceedance

frequency as well as alternative exceedance frequencies. For swimming advisories, EPA is proposing that these recommended values could be used to trigger public notification whenever values are exceeded for one day. EPA is soliciting public comment on this recommended single day exceedance as well as alternative exceedance frequencies.

The original deadline to submit comments was February 17, 2017. This action extends the comment period for 31 days, for a total of 91 days of public comment. Written comments must now be received by March 20, 2017. The draft report and other supporting materials may also be viewed and downloaded from EPA's Web site at *https://www.epa.gov/wqc/microbial-pathogenrecreational-water-quality-criteria#swimming.*

Dated: February 2, 2017.

Michael Shapiro,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2017–03067 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL- 9959–29–OAR]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015 is available for public review. Annual U.S. emissions for the period of time from 1990 through 2015 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3) emissions. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015 is the latest in a series of annual, policy-neutral U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2017, as well as subsequent inventory reports.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments by March 17, 2017. However, comments received after that date will still be welcomed and considered for the next edition of this report.

ADDRESSES: Comments should be submitted to GHG Inventory at: Environmental Protection Agency, Climate Change Division (6207A), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Fax: (202) 343–2338. You are welcome and encouraged to send an email with your comments to *GHGInventory@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Mausami Desai, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–2338, *desai.mausami@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft report is available at: *http://www3.epa.gov/climatechange/ghgemissions/usinventoryreport.html.*

Dated: February 3, 2017.

Reid P. Harvey,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2017–03070 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0353; FRL–9959–32–OW]

Extension of Public Comment Period: Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity. In response to stakeholder requests, the comment period will be extended for an additional 62 days, from February 21, 2017 to April 24, 2017.

DATES: Comments must be received on or before April 24, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2016–0353, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Colleen Flaherty, Health and Ecological Criteria Division (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564–5939; or email: *flaherty.colleen@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 23, 2016 (81 FR 94370), EPA announced the availability of the Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity, and opened a 60-day public review and comment period to solicit scientific views, data, and information regarding the science and technical approach used in the derivation of the draft field-based methods. EPA is also soliciting suggestions from the public for additional ecoregional case studies for future consideration.

The original deadline to submit comments was February 21, 2017. This action extends the comment period for 62 days. Written comments must now be received by April 24, 2017. The draft methods and other supporting materials may also be viewed and downloaded from EPA's Web site at *https://www.epa.gov/wqc/draft-field-based-methods-developing-aquatic-life-criteria-specific-conductivity.*

Dated: February 3, 2017.

Michael Shapiro,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2017–03066 Filed 2–14–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0800 and 3060–1058]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 17, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0800.

Title: FCC Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau and/or Public Safety and Homeland Security Bureau.

Form Number: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal government.

Number of Respondents and Responses: 2,447 respondents and 2,447 responses.

Estimated Time per Response: 0.5–1.75 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154, 155, 158, 161, 301, 303(r), 308, 309, 310 and 332.

Total Annual Burden: 2,759 hours.

Total Annual Cost: $366,975.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 603 is a multi-purpose form used to apply for approval of assignment or transfer of control of licenses in the wireless services. The data collected on this form is used by the FCC to determine whether the public interest would be served by approval of the requested assignment or transfer. This form is also used to notify the Commission of consummated assignments and transfers of wireless and/or public safety licenses that have previously been consented to by the Commission or for which notification but not prior consent is required. This form is used by applicants/licensees in the Advanced Wireless Services, Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Broadband Radio Services, Educational Radio Services, Fixed Microwave Services, Maritime Services (excluding ships), and Aviation Services (excluding aircraft).

The purpose of this form is to obtain information sufficient to identify the parties to the proposed assignment or transfer, establish the parties basic eligibility and qualifications, classify the filing, and determine the nature of the proposed service. Various technical schedules are required along with the main form applicable to Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, Notification of Consummation or Request for Extension of Time for Consummation.

The data collected on FCC Form 603 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission use an FRN.

On July 20, 2015, the Commission released the *Part 1 R&O* in which it updated many of its Part 1 competitive bidding rules (*See Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures,* Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, FCC 15–80, 30 FCC Rcd 7493 (2015), modified by *Erratum,* 30 FCC Rcd 8518 (2015) (*Part 1 R&O*)). Of relevance to the information collection at issue here, the Commission: (1) Modified the eligibility requirements for small business benefits, and updated the standardized schedule of small business sizes, including the gross revenues thresholds used to determine eligibility; (2) established a new bidding credit for eligible rural service providers; and (3) adopted targeted attribution rules to prevent the unjust enrichment of ineligible entities. The updated Part 1 rules apply to applicants seeking licenses and permits.

Additionally, on June 2, 2014 the Commission released the *Mobile Spectrum Holdings R&O,* in which the Commission updated its spectrum screen and established rules for its upcoming auctions of low-band spectrum. Of relevance to the information collection at issue here, the

Commission stated that it could reserve spectrum in order to ensure against excessive concentration in holdings of below-1–GHz spectrum (*In the Matter of Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* FCC 14–63, Report and Order, 29 FCC Rcd 6133, 90 ¶ 135 (2014) (*Mobile Spectrum Holdings R&O*). *See also Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding,* Public Notice, 30 FCC Rcd 11034, Appendix 3 (WTB 2015); *Wireless Telecommunications Bureau Releases Updated List of Reserve-Eligible Nationwide Service Providers in each PEA for the Broadcast Incentive Auction,* Public Notice, AU No. 14–252 (WTB 2016).

The Commission seeks approval for revisions to its previously approved collection of information under OMB Control Number 3060–0800 to permit the collection of the additional information for Commission licenses and permits, pursuant to the rules and information collection requirements adopted by the Commission in the *Part 1 R&O* and the *Mobile Spectrum Holdings R&O.* As part of the collection, the Commission is seeking approval for the information collection and recordkeeping requirements associated with FCC Form 603.

In addition, the Commission seeks approval for various other, non-substantive editorial/consistency edits and updates to FCC Form 603 that correct inconsistent capitalization of words and other typographical errors, and better align the text on the form with the text in the Commission rules both generally and in connection with recent non-substantive, organizational amendments to the Commission's rules. Also, in certain circumstances, the Commission requires the applicant to provide copies of their agreements. We do not anticipate that these revisions will impact the collection filing burden.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 603 to revise FCC Form 603 accordingly.

OMB Control Number: 3060–1058.

Title: FCC Application or Notification for Spectrum Leasing Arrangement: Wireless Telecommunications Bureau and/or Public Safety and Homeland Security Bureau

Form Number: FCC Form 608.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal government.

Number of Respondents and Responses: 991respondents and 991 responses.

Estimated Time per Response: 0.5–1 hour.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154, 155, 158, 161, 301, 303(r), 308, 309, 310 and 332.

Total Annual Burden: 996 hours.

Total Annual Cost: $1,282,075.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 608 is a multipurpose form. It is used to provide notification or request approval for any spectrum leasing arrangement (''Leases'') entered into between an existing licensee (''Licensee'') in certain wireless services and a spectrum lessee (''Lessee''). This form also is required to notify or request approval for any spectrum subleasing arrangement (''Sublease''). The data collected on the form is used by the FCC to determine whether the public interest would be served by the Lease or Sublease. The form is also used to provide notification for any Private Commons Arrangement entered into between a Licensee, Lessee, or Sublessee and a class of third-party users (as defined in Section 1.9080 of the Commission's Rules).

On July 20, 2015, the Commission released the *Part 1 R&O* in which it updated many of its Part 1 competitive bidding rules (*See Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures,* Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, FCC 15–80, 30 FCC Rcd 7493 (2015), modified by *Erratum,* 30 FCC Rcd 8518 (2015) (*Part 1 R&O*)). Of relevance to the information collection at issue here, the Commission: (1) Modified the eligibility requirements for small business benefits, and updated the standardized schedule of small business sizes, including the gross revenues thresholds used to determine eligibility; (2) established a new bidding credit for eligible rural service providers; and (3) adopted targeted attribution rules to prevent the unjust enrichment of ineligible entities. The updated Part 1 rules apply to applicants seeking licenses, leases, and permits.

Additionally, on June 2, 2014 the Commission released the *Mobile Spectrum Holdings R&O,* in which the Commission updated its spectrum screen and established rules for its upcoming auctions of low-band spectrum. Of relevance to the information collection at issue here, the Commission stated that it could reserve spectrum in order to ensure against excessive concentration in holdings of below-1–GHz spectrum (*In the Matter of Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* FCC 14–63, Report and Order, 29 FCC Rcd 6133, 90 ¶ 135 (2014) (*Mobile Spectrum Holdings R&O*). *See also Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding,* Public Notice, 30 FCC Rcd 11034, Appendix 3 (WTB 2015); *Wireless Telecommunications Bureau Releases Updated List of Reserve-Eligible Nationwide Service Providers in each PEA for the Broadcast Incentive Auction,* Public Notice, AU No. 14–252 (WTB 2016).

The Commission seeks approval for revisions to its previously approved collection of information under OMB Control Number 3060–1058 to permit the collection of the additional information for Commission licenses, leases and permits, pursuant to the rules and information collection requirements adopted by the Commission in the *Part 1 R&O* and the *Mobile Spectrum Holdings R&O.* As part of the collection, the Commission is seeking approval for the information collection and recordkeeping requirements associated with FCC Form 608.

In addition, the Commission seeks approval for various other, non-substantive editorial/consistency edits and updates to FCC Form 608 that correct inconsistent capitalization of words and other typographical errors, and better align the text on the form with the text in the Commission rules both generally and in connection with

recent non-substantive, organizational amendments to the Commission's rules. Also, in certain circumstances, the Commission requires the applicant to provide copies of their agreements. We do not anticipate that these revisions will impact the collection filing burden.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 608 to revise FCC Form 608 accordingly.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–03036 Filed 2–14–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0250]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 17, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 6,462 respondents; 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 5,506 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.1207 require that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

The information collection requirements contained in 47 CFR 74.784(b) require that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

Lastly, the information collection requirements contained in 47 CFR 74.1284 require that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–03037 Filed 2–14–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, February 7, 2017 at 10:00 a.m. and its continuation on February 9, 2017.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting was closed to the public.

Federal Register Notice of Previous Announcement—82 FR 9070

This item was also discussed: Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Dayna C. Brown,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2017–03148 Filed 2–13–17; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2017–N–03]

Federal Home Loan Bank Community Support Program—Opportunity To Comment on Members Subject to Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) reviews all applicable Federal Home Loan Bank (Bank) members every two years under FHFA's community support requirements regulation. FHFA is undertaking its review for the 2017 review cycle. This Notice invites the public to comment on the community support performance of individual members.

DATES: Public comments on individual Bank members' community support performance must be submitted to FHFA on or before March 31, 2017.

ADDRESSES: Comments on members' community support performance should be submitted to FHFA by electronic mail at *hmgcommunitysupportprogram@fhfa.gov* or by fax to 202–649–4308.

FOR FURTHER INFORMATION CONTACT: Deattra Perkins, Senior Policy Analyst, at *hmgcommunitysupportprogram@fhfa.gov* or 202–649–3133, Division of Housing Mission and Goals, Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service that Bank members must meet in order to maintain access to long-term Bank advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and the Bank member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and establishes review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—members' CRA performance and members' record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members subject to community support review, including those not subject to the CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c). Members that have been certified as community development financial institutions (CDFIs) are deemed to be in compliance with the community support requirements and are not subject to periodic community support review, unless the CDFI member is also an insured depository institution or a CDFI credit union. 12 CFR 1290.2(d). In addition, FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. 12 CFR 1290.2(e).

Under the regulation, FHFA reviews each applicable member once every two years. Starting April 1, 2017, each member that is subject to community support review will be required to use an online form to submit to FHFA a completed Community Support Statement, executed by an appropriate senior officer of the member. All Community Support Statements for this review cycle must be submitted using the online form by December 31, 2017. FHFA will review the community support performance of each member after receiving the member's completed Community Support Statement.

II. Public Comments

FHFA encourages the public to submit comments by March 31, 2017, on the community support performance of Bank members. Each Bank is required to post a notice on its public Web site and to notify its Advisory Council, nonprofit housing developers, community groups, and other interested parties in its district of the opportunity to submit comments on the community support programs and activities of Bank members, with the name and address of each member subject to community support review. 12 CFR 1290.2(c)(1). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(c)(3). To ensure consideration by FHFA, comments concerning the community support performance of members being reviewed in 2017 must be submitted to FHFA, either by electronic mail to *hmgcommunitysupportprogram@fhfa.gov,* or by fax to 202–649–4308, on or before March 31, 2017. 12 CFR 1290.2(c)(2).

The names of applicable members currently subject to Community Support review can be found on the public Web sites for the individual Banks at:

Federal Home Loan Bank of Boston—District 1 (Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont) *http://www.fhlbboston.com/communitydevelopment/programs/support_statements.jsp*

Federal Home Loan Bank of New York—District 2 (New Jersey, New York, Puerto Rico) *http://www.fhlbny.com/news-events/bulletins-memos/prior-*

bulletins-memos/2015/bulletin062915.aspx

Federal Home Loan Bank of Pittsburgh—District 3 (Delaware, Pennsylvania, West Virginia) *https://www.fhlb-pgh.com/Files/Resources/CSS.pdf*

Federal Home Loan Bank of Atlanta—District 4 (Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia) *http://corp.fhlbatl.com/*

Federal Home Loan Bank of Cincinnati—District 5 (Kentucky, Ohio, Tennessee) *https://www.fhlbcin.com/*

Federal Home Loan Bank of Indianapolis—District 6 (Indiana, Michigan) *https://www.fhlbi.com/products-services/communities-and-housing*

Federal Home Loan Bank of Chicago—District 7 (Illinois, Wisconsin) *http://www.fhlbc.com/ProductsandServices/CommunityInvestmentsandAffordableHousingPrograms/Pages/federal-home-loan-bank-chicago-community-support-statements.aspx*

Federal Home Loan Bank of Des Moines—District 8 (Alaska, Guam, Hawaii, Idaho, Iowa, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming) *http://www.fhlbdm.com*

Federal Home Loan Bank of Dallas—District 9 (Arkansas, Louisiana, Mississippi, New Mexico, Texas) *https://www.fhlb.com/membership/Pages/Community-Support-Standards.aspx*

Federal Home Loan Bank of Topeka—District 10 (Colorado, Kansas, Nebraska, Oklahoma) *https://www.fhlbtopeka.com/community-programs-community-support-statements*

Federal Home Loan Bank of San Francisco—District 11 (Arizona, California, Nevada) *http://www.fhlbsf.com/community/grant/community-support-review.aspx*

Dated: February 10, 2017.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2017–03064 Filed 2–14–17; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 2, 2017.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Steven R. Lane, Farnhamville, Iowa, individually, and as a family group acting in concert with: Randy A. and Geri L. Lane, El Cajon, California; Keith V. and Sharon M. Lane, North Las Vegas, Nevada; Kathryn A. Lane and Joseph Thomas Fromme, Hilton Head, South Carolina; Renae M. Lane, Farnhamville, Iowa; Bradley S. and Jennifer L. Lane, Gowrie, Iowa; Brian T. and Jessica Lane, Farnhamville, Iowa; Cody and Tiffany R. Christensen, Des Moines, Iowa; Todd M. Madson, Jefferson, Iowa; Bret A. Madson, Jefferson, Iowa; Cheri S. Delay, Jefferson, Iowa;* to retain control of more than 25 percent of the voting shares of Security Financial, Inc., Farnhamville, Iowa, and thereby indirectly control Security Savings Bank, Gowrie, Iowa.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *First Financial Northwest Inc. Employee Stock Ownership Trust (ESOP), and ESOP Administrators Dana E. Floth, Christine Huestis, and Richard P. Jacobson, all of Renton, Washington; and ESOP Trustee, First Bankers Trust Services, Inc., Quincy, Illinois;* to retain and acquire additional voting shares of First Financial Northwest, Inc., and thereby indirectly acquire shares of First Financial Northwest Bank, both of Renton, Washington.

Board of Governors of the Federal Reserve System, February 10, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–03053 Filed 2–14–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 1, 2017.

Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

The George V. and Nora J. Deaton Living Trust, Paducah, Texas; for George V. Deaton and Russell Edward Deaton, both of Paducah, Texas; as co-trustees and as members of the Deaton Family Group, to retain voting shares of First Paducah Bancshares of Texas, Inc., and thereby indirectly, The First National Bank of Paducah, all of Paducah, Texas.

Board of Governors of the Federal Reserve System, February 9, 2017.

Yao Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–02971 Filed 2–14–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0161; Docket No. 2016–0053; Sequence No. 37]

Submission for OMB Review; Reporting Purchases From Sources Outside the United States

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning reporting purchases from sources outside the United States. A notice was published in the **Federal Register** at 81 FR on 76357 on November 2, 2016. No comments were received.

DATES: Submit comments on or before March 17, 2017.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''9000–0161; Reporting of Purchases from Outside the United States''. Select the link ''Submit a Comment'' that corresponds with ''9000–0161; Reporting of Purchases from Outside the United States''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and 9000–0161; Reporting of Purchases from Outside the United States'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0161.

Instructions: Please submit comments only and cite IC 9000–0161, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 or via email at *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The information on place of manufacture was formerly used by each Federal agency to prepare a report to Congress required by 41 U.S.C. 8302(b)(1) for FY 2009 through 2011 on acquisitions of articles, materials, or supplies that are manufactured outside the United States. However, the data is still necessary for analysis of the application of the Buy American statute and the trade agreements and for other reports to Congress. Additionally, contracting officers require this data as the basis for entry into the Federal Procurement Data System for further data on the rationale for purchasing foreign manufactured items.

B. Annual Reporting Burden

Number of respondents: 48,215.

Responses per respondent: 30.77034.

Total annual responses: 1,483,592.

Hours per response: 0.01.

Total response burden hours: 14,836.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0161, Reporting Purchases from Sources Outside the United States, in all correspondence.

Dated: February 10, 2017.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2017–03024 Filed 2–14–17; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0955]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposal collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Early Hearing Detection and Intervention–Pediatric Audiology Links to Service (EHDI–PALS) Survey (OMB No. 0920–0955, Expiration Date 03/31/2017)—Revision—National Center on Birth Defects and Developmental

Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Human Development and Disability, located within NCBDDD, promotes the health of babies, children, and adults, with a focus on preventing birth defects and developmental disabilities and optimizing the health outcomes of those with disabilities. In 2014, 2015, and 2016, NCBDDD sponsored the Early Hearing Detection and Intervention–Pediatric Audiology Links to Service (EHDI–PALS) Survey. NCBDDD requests OMB approval to continue conducting the EHDI–PALS Survey in 2017, 2018, and 2019. The survey is designed to facilitate timely referrals for hearing screening, diagnostic, and follow-up care services for infants and children ages 0–5 years.

Early interventions for infants and children with hearing loss can prevent or mitigate delays in speech, language, and cognitive development. Since passage of the Early Hearing Detection and Intervention (EHDI) Act in 2010, 98% of newborn infants are now screened for hearing loss prior to hospital discharge. Many states have additional legislation that requires health care providers to report cases of childhood hearing loss to state-based EHDI programs. Key recommendations are based on the ''1–3–6'' framework: Screening of all infants for hearing loss by 1 month of age, ensuring diagnostic audiologic evaluation by 3 months of age for those who do not pass the screening, and enrollment in early intervention services by 6 months of age for those identified with hearing loss. However, many infants and children do not receive the recommended hearing tests and follow-up services. In 2013, the national average loss to follow-up/loss to documentation rate was 32%, but varied widely from state to state and within states.

High rates of loss to follow-up or loss to documentation remain areas of critical concern for state EHDI programs. Reasons for loss to follow-up or documentation include lack of convenient audiology clinics (geographic distribution of clinics), lack of providers with the specialized training needed to diagnose or treat infants and children ages 0–5 (capacity), consumers' difficulty finding the right provider (information), providers' lack of awareness of or compliance with state reporting requirements (compliance), and other factors.

The annual EHDI–PALS Survey was developed to help states verify the distribution of their pediatric audiology resources, quantify their true follow-up capacity, and support efforts to meet diagnostic and follow-up goals defined by the 1–3–6 framework. Survey respondents are audiologists and audiology facility managers who submit information online through a secure, password protected site managed by the University of Maine. Survey findings have been made available to state EHDI program staff through specialized reports useful for program planning and evaluation. In addition, information has been made available to state EHDI staff and the public through the EHDI–PALS Web site, which provides a searchable directory of facilities and practices that offer pediatric audiology services. Since 2014, state EHDI program personnel accessed the collected data over 3,000 times and consumers visited the EHDI–PALS site for facility information over 140,000 times. This high usage rate lends strong support for survey continuation.

Participation will be requested in two ways. Both the American Speech-Language-Hearing Association and the American Academy of Audiology are members of the EHDI–PALS workgroup and will continue to disseminate announcements through association e-newsletters and e-announcements requesting the participation of their members. CDC estimates that this will result in 200 new responses per year. The estimated burden for a new respondent is 9 minutes. Respondents who have participated in the EHDI–PALS survey in previous years will receive a brief email from the University of Maine asking them to review the information on file for them. It is estimated that approximately 800 audiologists will do so. It takes approximately 2 minutes per person to review and update previously submitted data. Finally, it is estimated that an additional 400 audiologists will read through the purpose statement located on page one of the survey and discontinue their participation. The estimated burden per response for a dropout is 1 minute. The revised method of calculating burden results in a reduction in total estimated annualized burden hours.

Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 64.

CDC requests approval from OMB to continue the EHDI–PALS survey for three years. There are no changes to the online survey instrument. Survey findings will continue to be used for state-based program improvement and to assist consumers in locating facilities that offer the services they need. In addition, CDC's EHDI program will use findings to provide targeted technical assistance to state-based EHDI programs.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Audiologist or practice representative (first-time participant) ...	EHDI–PALS Survey	200	1	9/60
Audiologist or practice representative (previous participant) ...	EHDI–PALS Survey	800	1	2/60
Audiologist or practice representative (survey dropout)	EHDI–PALS Survey Introduction.	400	1	1/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2017–02980 Filed 2–14–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:
Title:

Form OCSE–396, ''Child Support Enforcement Program Quarterly Financial Report''

Form OCSE–34, ''Child Support Enforcement Program Quarterly Collection Report''

OMB No.: 0970–0181.

Description: Form OCSE–396 and Form OCSE–34 are financial reports submitted following the end of each fiscal quarter by grantees administering the Child Support Enforcement Program in accordance with plans approved under title IV–D of the Social Security Act. Submission of these forms enables grantees to meet their statutory and regulatory requirement to report program expenditures and child support collections, respectively, from the previous fiscal quarter.

States use Form OCSE–396 to report quarterly expenditures made in the previous quarter and to estimate program expenditures to be made and the incentive payments to be earned in the upcoming quarter. The Administration for Children and Families provides Federal funding to States for the Child Support Enforcement Program at the rate of 66 percent for all allowable and legitimate administrative costs of this program.

Tribes use OMB Form SF–425 to report quarterly expenditures made in the previous quarter. Form SF–425 is not included as part of this comment request.

States and Tribes use Form OCSE–34 to report child support collection activity during the previous quarter, including collections received, the distribution and disbursement of collections and any collections remaining undistributed.

The information collected in these reports is used by this agency to calculate quarterly Federal grant awards and incentive payments to States, to enable oversight of the financial management of the program for both States and Tribes and may be included in statistical and financial reports available to the public.

Respondents: 54 States (including Puerto Rico, Guam, the Virgin Islands and the District of Columbia) for Forms OCSE–396 and OCSE–34 plus approximately 60 Tribes for Form OCSE–34.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396	54	4	4	864
OCSE–34	114	4	9	4,104

Estimated Total Annual Burden Hours: 4,968.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017–02979 Filed 2–14–17; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Bioequivalence Recommendations for Difluprednate; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a revised draft guidance for industry on generic difluprednate emulsion, entitled ''Draft Guidance on Difluprednate.'' The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for difluprednate emulsion.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 17, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that

identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Draft Guidance on Difluprednate.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' will be publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Xiaoqiu Tang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE guidances available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific BE guidances and to provide a meaningful opportunity for the public to consider and comment on the guidance. This notice announces the availability of revised draft BE recommendations for generic difluprednate emulsion.

FDA initially approved new drug application 022212 for DUREZOL (difluprednate emulsion) in June 2008. In January 2016, FDA issued a draft guidance for industry on BE recommendations for generic difluprednate emulsion. We are now issuing a revised draft guidance for industry on BE recommendations for difluprednate emulsion (''Draft Guidance on Difluprednate'').

In September 2016, Alcon Pharmaceuticals, Ltd. and its affiliated company, Novartis Pharmaceuticals Corporation, submitted a citizen petition requesting that FDA take several actions with respect to ANDAs for difluprednate emulsion, including regarding the demonstration of BE for any ANDA referencing DUREZOL. FDA has reviewed the issues raised in this citizen petition and is responding to the citizen petition separately in the docket for that citizen petition (Docket No. FDA–2016–P–2781, available at *http://www.regulations.gov*).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the design of BE studies to support ANDAs for difluprednate emulsion. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 9, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–02972 Filed 2–14–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Single-Chain Antibodies Directed to Norovirus GI.1 and GII.4 and Their Use

Description of Technology: Vaccines and therapies to prevent and treat Norovirus infections are not available, despite the worldwide prevalence of Norovirus infections. Outbreaks of human gastroenteritis attributable to Norovirus commonly occur in group settings, such as hospitals, nursing homes, schools, dormitories, cruise ships and military barracks. This application claims isolated VHH monoclonal antibodies that specifically bind to a Norovirus polypeptide. Llama-derived single chain antibody fragments (also called VHH) are small, recombinant monoclonal antibodies of 15 kDa (''nanobodies'') with several advantages over conventional antibodies. The antibodies that were derived from llamas showed strong neutralizing activity against Norovirus in *in vitro* assays. These nanobodies may have application as immunoprophylaxis to protect individuals from infections or as a possible treatment for infected individuals, or can be used to develop a diagnostic for detection of norovirus infections, and may be potentially utilized in vaccine research.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Therapeutics
- Diagnostics
- Vaccine research

Competitive Advantages:

- Ease of manufacture
- Potent neutralizing activity
- Potential cross-reactivity
- Low-cost therapeutics/ immunoprophylaxis

Development Stage:

- In vivo data assessment (animal)

Inventors: Lisbeth Kim Green (NIAID), Karin Bok (NIAID), Stanislav Sosnovtsev (NIAID), Marina Bok (EM), Pamela Aguilar (EM), Lorena Garaicoechea (EM), and Viviana Parreno (EM).

Publications: Garaicoechea L. et al., ''Llama nanoantibodies with therapeutic potential against human norovirus diarrhea,'' PLoS One. 2015 Aug 12;10(8):e0133665. doi:10.1371/journal.pone.0133665. eCollection 2015. [PMID 26267898].

Intellectual Property: HHS Reference No. E–136–2013/0—U.S. Provisional Application No. 61/821,354, filed May 9, 2013; PCT Application No. PCT/US2014/037520, filed May 9, 2014; European Application No. 14727696.8, filed May 9, 2014 (pending); U.S. Application No. 14/889,774, filed November 6, 2015 (pending); and Argentine Application No. 20140101882, filed May 9, 2014 (pending).

Licensing Contact: Peter Soukas, J.D., 301–594–8730; *peter.soukas@nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize for development of a therapeutic, diagnostic or vaccine for Norovirus infections. For collaboration opportunities, please contact Peter Soukas, J.D., 301–594–8730; *peter.soukas@nih.gov*.

Dated: February 8, 2017.

Suzanne Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2017–03015 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Muscular Dystrophy Coordinating Committee Call for Committee Membership Nominations

SUMMARY: The Office of the Secretary of the Department of Health and Human Services (HHS) is seeking nominations for an individual to serve as a nonfederal public member on the Muscular Dystrophy Coordinating Committee.

DATES: Nominations are due by 5 p.m. EST on March 17, 2017.

ADDRESSES: Nominations must be sent to Glen Nuckolls, Ph.D., by email to *nuckollg@ninds.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Glen Nuckolls, Ph.D., by email to *nuckollg@ninds.nih.gov.*

SUPPLEMENTARY INFORMATION: The Muscular Dystrophy Coordinating Committee (MDCC) is a federal advisory committee established in accordance with the Muscular Dystrophy Community Assistance, Research, and Education Amendments of 2001 (MD–CARE Act; Pub. L. 107–84). The MD–CARE Act was reauthorized in 2008 by Pub. L. 110–361, and again in 2014 by Pub. L. 113–166. The MD–CARE Act specifies that the committee membership be composed of 2/3 governmental agency representatives and 1/3 public members. We are seeking nominations for four non-federal, public members at this time, due to turnover of committee membership. Nominations will be accepted between February 17 and March 17, 2017.

Who is Eligible: Nominations are encouraged for new or reappointment of non-federal public members who can provide the public and/or patient perspectives to discussions of issues considered by the Committee. Self-nominations and nominations of other individuals are both permitted. Only one nomination per individual is required. Multiple nominations for the same individual will not increase likelihood of selection. Non-federal, public members may be selected from the pool of submitted nominations or other sources as needed to meet statutory requirements and to form a balanced committee that represents the diversity within the muscular dystrophy communities. Nominations are especially encouraged from leaders or representatives of muscular dystrophy research, advocacy, or service organizations, individuals with muscular dystrophy or their parents or guardians. In accordance with White House Office of Management and Budget guidelines (FR Doc. 2014–19140), federally-registered lobbyists are not eligible.

Committee Composition: The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of all genders, all ethnic and racial groups, and people with disabilities are represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this

Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Requests for reasonable accommodation to enable participation on the Committee should be indicated in the nomination submission.

Member Terms: Non-Federal public members of the Committee serve for a term of 3 years, and may serve for an unlimited number of terms if reappointed. Members may serve after the expiration of their terms, until their successors have taken office.

Meetings and Travel: As specified by Pub. L. 113–166, the MDCC ''shall meet no fewer than two times per calendar year.'' Travel expenses are provided for non-federal public Committee members to facilitate attendance at in-person meetings. Members are expected to make every effort to attend all full committee meetings, twice per year, either in person or via remote access. Participation in relevant subcommittee, working and planning group meetings, and workshops, is also encouraged.

Submission Instructions and Deadline: Nominations are due by 5 p.m. EST on March 17, 2017, and should be sent to Glen Nuckolls, Ph.D., by email to *nuckollg@ninds.nih.gov.*

Nominations must include contact information for the nominee, a current curriculum vitae or resume of the nominee and a paragraph describing the qualifications of the person to represent some portion(s) of the muscular dystrophy research, advocacy and/or patient care communities.

More information about the MDCC is available at *https://mdcc.nih.gov/.*

Dated: February 10, 2017.

Walter J. Koroshetz,

Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2017–03018 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Genetic Variation and Evolution Study Section, February 16, 2017, 08:00 a.m. to February 17, 2017, 07:00 p.m., Renaissance M Street Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037 which was published in the **Federal Register** on January 23, 2017, 82 FR 7842.

The meeting will be held on 02/17/2017 instead of 02/16/2017–02/17/2017. The meeting time and location remains the same. The meeting is closed to the public.

Dated: February 9, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–03013 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; K Award—R13 Review Meeting (2017/05).

Date: March 9, 2017.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Dated: February 9, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–03012 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee MID–B March 2017.

Date: March 6–7, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 9, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–03014 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for

licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Synergistic Internal Ribosomal Entry Site (IRES)—MicroRNA-Based Approach for Attenuation of Flaviviruses and Live Vaccine Development

Description of Technology: Many members of the *Flaviviridae* family are emerging and reemerging human pathogens that have caused outbreaks of devastating and often fatal diseases and represent a serious public health problem on a global scale. There is no single attenuation strategy that exists which is sufficient to prepare a safe, efficacious and immunogenic live attenuated virus vaccine that will work universally for *Flaviviridae.* This patent application claims live attenuated flavivirus vaccines, live attenuated multivalent flavivirus vaccines, and methods of preventing flavivirus infections as well as methods of making the vaccines claimed in the application. More specifically, this patent application claims methods for attenuating a flavivirus or chimeric flavivirus using a synergistic dual strategy involving inserting miRNA-targeting sequences to restrict virus replication in target hosts, cells and/or tissues and placing one or more flavivirus genes under translational control of an internal ribosomal entry site (IRES).

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Diagnostics
- Vaccines

Competitive Advantages:

- Potential one-dose flavivirus vaccine
- Ease of manufacture in Vero cells
- Low-cost potential vaccine
- Developing and developed world potential vaccines

Development Stage:

- In vivo data available (animal)

Inventors: Alexander Pletnev (NIAID), Konstantin Tsetsarkin (NIAID).

Intellectual Property: HHS Reference No. E–006–2017/0—U.S. Provisional Application No. 62/443,214, filed January 6, 2017.

Licensing Contact: Peter Soukas, J.D., 301–594–8730; *peter.soukas@nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize vaccine(s) for prophylaxis against flavivirus infections. For collaboration opportunities, please contact Peter Soukas, J.D., 301–594–8730; *peter.soukas@nih.gov.*

Dated: February 6, 2017.

Suzanne Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2017–03017 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

A Bivalent Conjugate Vaccine for Malaria and Typhoid Prophylaxis

Description of Technology: Malaria is the single leading cause of mortality, especially among children in the developing world. Typhoid fever, caused by infection with *Salmonella typhi,* is known to be endemic with malaria and causes its own significant disease burden. Scientists at the National Institute of Allergy and Infectious Diseases (NIAID), part of the National Institutes of Health, have developed a novel bivalent vaccine candidate that may effectively prevent malaria and typhoid. This approach significantly enhances immune response to the Pfs25 Malaria transmission blocking antigen and produces a robust immune response against *Salmonella typhi* Vi polysaccharide (ViP).

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Development of this technology into a vaccine may protect vulnerable populations from both Malaria transmission and Typhoid fever.

Competitive Advantages:

- This technology has significant advantages over current treatments, since there is currently only one commercial Malaria vaccine licensed for use in Europe only, which was not developed to address Malaria transmission, and the currently licensed Salmonella typhi vaccines show incomplete efficacy and do not provide long-term immunity. A formulation of the present technology has shown the ability to induce an immune response to Pfs25 in excess of 100 times higher and Salmonella typhi antigen 20–40 times higher than what is seen by immunization with either antigen alone.

Development Stage:

- In vivo data available (animal).

Inventors: Drs. Patrick Duffy, Sojung An, and Puthupparampil Scaria, NIAID, NIH.

Publications: None.

Intellectual Property: Provisional Patent application #62/327,184 Filed 04/25/16, Technology reference #E–124–2016/0.

Licensing Contact: Daniel Anacker, Ph.D., 301–761–7671, *daniel.anacker@nih.gov*.

Collaborative Research Opportunity: The NIAID, Laboratory of Malaria Immunology and Vaccinology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Dr. Daniel Anacker at 301–761–7671 or *daniel.anacker@nih.gov* for more information.

Dated: February 8, 2017.

Suzanne Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2017–03016 Filed 2–14–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2017–0005]

The President's National Security Telecommunications Advisory Committee

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet via teleconference on Friday, March 3, 2017. The meeting will be open to the public.

DATES: The NSTAC will meet on Friday, March 3, 2017, from 12:00 p.m. to 1:00 p.m. Eastern Standard Time (EST). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to attend, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. EST on Monday, February 27, 2017.

Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that participants may discuss during the meeting will be available at *www.dhs.gov/nstac* for review as of Friday, February 24, 2017. Comments may be submitted at any time and must be identified by docket number DHS–2017–0005. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Please follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number DHS–2017–0005 in the subject line of the email.
- *Fax:* (703) 235–5962, ATTN: Sandy Benevides.
- *Mail:* Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0604, Arlington, VA 20598–0604.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number DHS–2017–0005.

A public comment period will be held during the conference call on Friday, March 3, 2017, from 12:40 p.m. to 12:55 p.m. EST. Speakers who wish to participate in the public comment period must register in advance and can do so by emailing *NSTAC@hq.dhs.gov* no later than Monday, February 27, 2017, at 5:00 p.m. EST. Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, (703) 235–5321 (telephone) or *helen.jackson@hq.dhs.gov* (email).

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on March 3, 2017, to discuss issues and challenges related to NS/EP communications, which will include discussions with high-level Government stakeholders and a review of ongoing NSTAC work, including an update on the NSTAC Emerging Technologies Strategic Vision Subcommittee's study of the near- and longer-term NS/EP implications of emergent and expected information and communications technologies.

Dated: February 2, 2017.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2017–03009 Filed 2–14–17; 8:45 am]

BILLING CODE 9110–9P–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Alamito and Terneros Sediment and Vegetation Removal Below Presidio Flood Control Project, Presidio, Texas

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083); the United States Section hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact (FONSI) for Alamito and Terneros Sediment and Vegetation Removal below Presidio Flood Control Project, Presidio, Texas is available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30-days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, Division Chief, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100, El Paso, Texas 79902. Telephone: (915) 832–4702, email: *Gilbert.Anaya@ibwc.gov*.

Background: This Final Environmental Assessment analyzes the potential impacts of removing accumulated sediment from Alamito and Terneros Creeks at their confluence

with the Rio Grande and removal of vegetation along the United States side of the Rio Grande between Brito Creek and Terneros Creek in Presidio County, Texas.

Availability: The electronic version of the Final EA and FONSI is available from the USIBWC Web page: *www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html.*

Dated: February 1, 2017.

Matt Myers,

Chief Legal Council.

[FR Doc. 2017–02770 Filed 2–14–17; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–997]

Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation in Its Entirety Based Upon Settlement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 44) granting a joint motion to terminate the investigation in its entirety based upon settlement.

FOR FURTHER INFORMATION CONTACT: Panyin A Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–997 on May 18, 2016, based on a complaint filed by ResMed Corporation of San Diego, California; ResMed Incorporated of San Diego, California; and ResMed Limited of New South Wales, Australia (collectively, ''ResMed''). 81 FR 31255–56 (May 18, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof that infringe one or more claims of U.S. Patent No. RE44,453; U.S. Patent No. 8,006,691; U.S. Patent No. 8,020,551; and U.S. Patent No. 9,072,860. The notice of investigation named the following respondents: BMC Medical Co., Ltd. of Beijing, China; 3B Medical, Inc. of Lake Wales, Florida; and 3B Products, L.L.C., of Lake Wales, Florida (collectively ''BMC''). The Office of Unfair Import Investigations (''OUII'') is not participating in the investigation.

On January 23, 2017, ResMed and BMC filed a joint motion to terminate the investigation in its entirety based upon settlement.

On January 24, 2017, the ALJ issued the subject ID, granting the joint motion to terminate the investigation in its entirety based upon settlement. The ALJ found that confidential and public copies of the settlement agreement were provided in compliance with the requirements of Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), and that terminating the investigation would not be contrary to the public interest.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: February 9, 2017.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–02988 Filed 2–14–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1006]

Certain Passenger Vehicle Automotive Wheels; Commission Determination Not To Review Initial Determination Terminating the Investigation as to the Last Remaining Respondents; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 24) of the presiding administrative law judge (''ALJ''), terminating the above-captioned investigation as to respondents A–Z Wheels, LLC, Galaxy Wheels & Tires, LLC, and Infobahn International, Inc., all of San Diego, California (collectively, ''the last remaining respondents''), based on withdrawal of the allegations in the complaint. The Commission has also determined to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2016, based on a complaint filed on behalf of Daimler AG of Stuttgart, Germany. 81 FR 39711–12. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of the following U.S. design patents and U.S. registered trademarks: D542,211 (''the 'D211 patent''); D582,330 (''the 'D330 patent'');

D656,078; D569,776 (''the 'D776 patent''); D602,834; D582,328; D542,726 (''the 'D726 patent''); D604,221; D570,760 (''the 'D760 patent''); D544,823 (''the 'D823 patent''); D486,437; D562,207; D635,904; D618,150 (''the 'D150 patent''); D585,802; D532,733 (''the 'D733 patent''); D572,646; D578,949; D638,772 (''the 'D772 patent''); D522,946; D638,766; D610,516; 3,614,891; 4,423,458; 3,305,055; 1,807,353; 1,660,727; 657,386; 285,557; 4,076,271 (''the CLS 500 mark''); 3,224,584 (''the CLS 550 mark''); 3,039,265 (''the CLS 63 mark''); 2,876,643; 2,909,827; 2,654,240 (''the S 550 mark''); 2,712,292; 2,028,111; 2,699,216 (''the CLS–CLASS mark''); 2,716,842 (''the S–CLASS mark''); 2,599,862; 2,028,107; 4,669,601; 3,103,610; 2,028,112; 3,100,860; 2,026,254; 2,815,926; 3,221,423; 2,227,526; 3,019,109; 2,837,833 (''the ML mark''); and 2,529,332 (''the CLS mark''). The complaint further alleges that a domestic industry exists. The Commission's notice of investigation named as respondents O.E. Wheel Distributors, LLC (''OEW'') of Sarasota, Florida; Amazon.com, Inc. (''Amazon'') of Seattle, Washington; A Spec Wheels & Tires, LLC d/b/a A SPEC Wheels & Tires (''ASPEC'') of Hayward, California; American Tire Distributors Holdings, Inc. and American Tire Distributors, Inc. (collectively, ''American Tire''), both of Huntersville, North Carolina; Onyx Enterprises Int'l Corp. d/b/a CARiD.COM (''Onyx'') of Cranbury, New Jersey; Powerwheels Pro, LLC (''Powerwheels Pro'') of Waterford, Michigan; Trade Union International Inc. d/b/a Topline (''Trade Union'') of Montclair, California; and the last remaining respondents. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.* As detailed below, all other respondents have been terminated from the investigation based on settlement, consent order, and/or withdrawal of the allegations in the complaint.

On August 18, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 11) terminating the investigation as to ASPEC based on a consent order stipulation and proposed consent order. On September 30, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 14) terminating the investigation as to Powerwheels Pro based on a consent order stipulation and proposed consent order. On November 2, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 15) terminating the investigation as to the 'D726 patent and the CLS 500 mark based on withdrawal of the complaint as to these allegations. On December 2, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 16) terminating the investigation as to American Tire based on a consent order stipulation, proposed consent order, and settlement agreements. On December 16, 2016, the Commission issued notice of its determination not to review the ALJ's IDs (Order Nos. 17, 18) terminating the investigation as to Onyx and Trade Union, each based on a consent order stipulation, proposed consent order, and settlement agreement. On the same date, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 19) terminating the investigation as to Amazon based on withdrawal of the allegations in the complaint as to Amazon. On January 6, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 21) terminating the investigation as to the 'D211, 'D330, 'D776, 'D726, 'D760, 'D823, 'D150, 'D733, and 'D772 patents; and the CLS 500, CLS 550, CLS 63, S 550, CLS–CLASS, S–CLASS, ML, and CLS marks based on withdrawal of the complaint as to these allegations. On February 2, 2017, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 23) terminating the investigation as to OEW based on a consent order stipulation, proposed consent order, and settlement agreement.

On January 17, 2017, the complainant filed an unopposed motion to terminate the investigation as to the last remaining respondents based on withdrawal of the allegations in the complaint as to these respondents. In the motion, the complainant states that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.

The ALJ issued the subject ID on January 23, 2017, granting the motion for termination. He found that the motion satisfied Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)) and that there are no extraordinary circumstances that warrant denying the motion. No party petitioned for review of the subject ID.

The Commission has determined not to review the ID and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

Issued: February 9, 2017.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–02987 Filed 2–14–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–006]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 22, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–556 and 731–TA–1311 (Final) (Truck and Bus Tires from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by March 13, 2017.
5. Vote in Inv. No. 731–TA–1091 (Second Review) (Artists' Canvas from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by March 2, 2017.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 9, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–03114 Filed 2–13–17; 11:15 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Anheuser-Busch InBEV SA/NV, et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h),

the United States hereby publishes below the Response of Plaintiff United States to Public Comments on the Proposed Final Judgment in *United States* v. *Anheuser-Busch InBev SA/NV, et al.,* Civil Action No. 1:16–cv–01483–EGS, which was filed in the United States District Court for the District of Columbia on January 13, 2017, together with copies of the 12 comments received by the United States.

Pursuant to the Court's January 19, 2017 minute order, comments were published electronically and are available to be viewed and downloaded at the Antitrust Division's Web site, at: *https://www.justice.gov/atr/case/us-v-anheuser-busch-inbev-sanv-and-sabmiller-plc.* A copy of the United States' response to the comments is also available at the same location.

Copies of the comments and the response are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of any of these materials may also be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Anheuser-Busch InBEV, and SABMiller plc,* Defendants.

Civil Action No. 1:16–cv–01483 (EGS)

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT

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I. INTRODUCTION

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. §§ 16(b)–(h), the United States hereby responds to the twelve public comments received regarding the proposed Final Judgment in this case. After careful consideration of the submitted comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this response have been published pursuant to 15 U.S.C. § 16(d).[1]

II. PROCEDURAL HISTORY

On November 11, 2015, Anheuser-Busch InBev SA/NV (''ABI'') entered into an agreement to acquire SABMiller plc (''SABMiller'') (collectively, ''Defendants'') in a transaction valued at approximately $107 billion. On July 20, 2016, the United States filed a civil antitrust Complaint, seeking to enjoin ABI from acquiring SABMiller. The Complaint alleges that ABI's proposed acquisition of SABMiller likely would substantially lessen competition in the sale of beer to customers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Stipulation signed by Plaintiff and Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. § 16, and a Competitive Impact Statement (''CIS'') describing the transaction and the proposed Final Judgment. The United States published the proposed Final Judgment and CIS in the *Federal Register* on August 4, 2016, *see* 81 Fed. Reg. 51465, and caused summaries of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in *The Washington Post* on August 3, 4, 5, 6, 7, 8, and 9, 2016. The 60-day period for public comment ended on October 4, 2016. The United States received twelve comments (Attachments 1 through 12).

III. STANDARD OF JUDICIAL REVIEW

The APPA requires that proposed consent judgments in antitrust cases

[1] On January 12, 2017, the United States submitted its Unopposed Motion and Supporting Memorandum to Excuse *Federal Register* Publication of Comments and Attachments, requesting that this Court authorize an alternative means for publishing the public comments and attachments received in this action (Doc. 15).

brought by the United States be subject to a 60-day public comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id.

The public interest inquiry is necessarily a limited one because, as courts have repeatedly held, the government is entitled to deference when determining whether a proposed settlement provides an effective and appropriate remedy for the alleged antitrust violation. *See generally United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995) (holding that the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest''); *United States v. US Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting that the court's ''inquiry is limited'' because the government has ''broad discretion'' to ''determine the adequacy of the relief secured through a settlement''); *United States v. InBev N.V./S.A.,* No. 08–cv–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the proposed Final Judgment are clear and manageable''); *United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 10–11 (D.D.C. 2007) (concluding that the court's public interest inquiry is ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether the enforcement mechanisms are sufficient, and whether the decree may harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not '' 'engage in an unrestricted evaluation of what relief would best serve the public.' '' *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62 (same); *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001) (same); *InBev,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (same). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, ''the court 'must accord deference to the government's predictions about the efficacy of its remedies.' '' *US Airways,* 38 F. Supp. 3d at 76 (quoting *SBC Commc'ns,* 489 F. Supp. at 17); *see also Microsoft,* 56 F.3d at 1461 (noting that the government's ''predictions as to the effect of the proposed remedies'' must be afforded deference); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the government's ''prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case''); *United States v. Morgan Stanley,* 881 F. Supp. 2d 563, 567–68 (S.D.N.Y. 2012) (explaining that the government is entitled to deference when crafting proposed remedies for antitrust violations).

Courts ''may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17. Rather, the ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461. Accordingly, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also United States v. Apple, Inc.,* 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012) (same).

A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of the public interest.'' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations and internal quotation marks omitted); *see also United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). And, the risk and uncertainty of further litigation are appropriate factors for the court to consider when evaluating whether a proposed remedy is in the public interest. *See SBC Commc'ns,* 489 F.Supp. 2d at 15 (''[R]oom must be made for the government to grant concessions in the negotiation process for settlements[.]'').

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement actions brought by the government by adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of the Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11; *see also United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (''[T]he Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to public comments alone.'');

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that a court's public interest inquiry ''remains sharply proscribed by precedent and the nature of Tunney Act proceedings'' because the 2004 amendments ''effected minimal changes'' to Tunney Act review).

US Airways, 38 F. Supp. 3d at 76 (same).

IV. THE INVESTIGATION AND THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is the culmination of a thorough nine month investigation conducted by the Antitrust Division of the United States Department of Justice (the ''Department''). In investigating the proposed transaction's likely competitive effects, the Department collected more than 1.4 million documents from the Defendants and third parties, conducted over 70 interviews of beer industry participants, took numerous party depositions, and coordinated with both state and foreign competition agencies reviewing the transaction. The Department carefully analyzed the information it obtained from these sources, as well as publicly available information, and thoroughly considered all of the competitive issues presented.

Based on evidence gathered during its investigation, the Department concluded that ABI's proposed acquisition of SABMiller would likely substantially lessen competition in the sale of beer to U.S. customers both nationally and in every local market in the United States by eliminating head-to-head competition between ABI and MillerCoors LLC (''MillerCoors''). The proposed transaction would have eliminated competition between ABI and MillerCoors—the two largest beer brewers in the United States—because it would have given ABI a majority ownership interest in and 50% governance rights over MillerCoors, which was a joint venture between SABMiller and Molson Coors Brewing Company (''Molson Coors'') through which SABMiller conducted substantially all of its U.S. operations. Accordingly, the Department filed a civil antitrust lawsuit to block the acquisition as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment provides an effective and appropriate remedy for the transaction's likely competitive harm by requiring ABI to divest SABMiller's equity and ownership stake in MillerCoors, as well as certain other assets related to MillerCoors' business and the Miller-branded beer business outside of the United States. After the Department filed the proposed Final Judgment, ABI acquired SABMiller and divested these assets to Molson Coors. The divestiture preserves competition in the U.S. beer industry by ensuring that MillerCoors continues to be an independent and viable competitor because it provides MillerCoors with (i) perpetual, royalty-free licenses to products for which it previously had to pay royalties, and (ii) ownership of the rights to the Miller beer brands.

To further help preserve and promote competition in the U.S. beer industry, the proposed Final Judgment (i) imposes certain restrictions on ABI's distribution practices and ownership of distributors, and (ii) requires ABI to provide the United States with notice of future acquisitions, including acquisitions of beer distributors and craft brewers, prior to their consummation. Among other things, the proposed Final Judgment prohibits ABI from:

- Acquiring a distributor if the acquisition would cause more than 10% of ABI's beer in the United States to be sold through ABI-owned distributors;
- Prohibiting or impeding a distributor that sells ABI's beer from using its best efforts to sell, market, advertise, promote, or secure retail placement for rivals' beers, including the beers of high-end brewers;
- Providing incentives or rewards to a distributor who sells ABI's beer based on the percentage of ABI beer the distributor sells as compared to the distributor's sales of the beers of ABI's rivals;
- Conditioning any agreement or program with a distributor that sells ABI's beer on the fact that it sells ABI's rivals' beer outside of the geographic area in which it sells ABI's beer;
- Exercising its rights over distributor management and ownership based on a distributor's sales of ABI's rivals' beers;
- Requiring a distributor to report financial information associated with the sale of ABI's rivals' beers;
- Requiring that a distributor who sells ABI's beer offer its sales force the same incentives for selling ABI's beer when the distributor promotes the beers of ABI's rivals with sales incentives; and
- Consummating non-reportable acquisitions of beer brewers—including craft brewers—without providing the United States with advance notice and an opportunity to assess the transaction's likely competitive effects.

The proposed Final Judgment also authorizes the Department to appoint a Monitoring Trustee—subject to the Court's approval—with the power and authority to monitor ABI's compliance with the terms of the proposed Final Judgment and other powers that the Court deems appropriate. Among other things, the Monitoring Trustee may investigate and report on complaints that ABI has violated the distribution-related restrictions contained in the proposed Final Judgment.

V. SUMMARY OF PUBLIC COMMENTS AND THE UNITED STATES' RESPONSE

During the 60-day comment period, the Department received twelve comments regarding the proposed Final Judgment. These comments came from individuals representing four beer wholesaler associations (Beer Distributors of Oklahoma, Virginia Beer Wholesalers Association Inc., Wholesale Beer Association Executives, and National Beer Wholesalers Association), two brewers (D.G. Yuengling & Son, Inc. and Ninkasi Brewing Company), Consumer Watchdog (a consumer advocacy organization), American Beverage Licensees (a national trade association), the Brewers Association, the North Carolina Department of Justice, the International Brotherhood of Teamsters, and Stephen Calkins, Professor of Law, Wayne State University.

In connection with sharing recommendations on how the proposed Final Judgment could be improved, many commenters acknowledged the meaningful protections for consumers and competition that the Department achieved through the proposed Final Judgment. For example:

- Virginia Beer Wholesalers Association stated that ''[o]verall,'' it ''believes that the proposed Final Judgment addresses the most egregious anticompetitive aspects of the'' ABI/SABMiller transaction; [3]
- American Beverage Licensees stated: ''The DOJ, in its proposed Final Judgment, addresses the concerns that a $100 billion brewer with a publicly-stated interest in expanding its distribution footprint presents to the United States' independent beer distribution system. This is an important recognition of the impact of vertical integration on access to distribution, and the DOJ rightly puts forth reasonable limits for ABI.'' [4]
- Beer Distributors of Oklahoma stated that it ''believes that the Complaint and Proposed Final Judgment (PFJ) identifies key issues and goes a long way towards providing necessary relief designed to protect the consumer by ensuring a more level playing field for brewers.'' [5]
- Consumer Watchdog applauded the Department for ''obtaining a comprehensive remedy to resolve wide-ranging competitive concerns resulting from the combination of the two largest global beer producers,'' and stated that the ''comprehensive remedy demonstrates the DOJ's newfound willingness to impose meaningful remedies to protect consumers and preserve competition when industry megaliths seek to merge.''[6]
- Wholesale Beer Association Executives stated: ''With the caveats expressed [in its comments], WBAE is supportive of the

[3] Virginia Beer Wholesalers Association comment at 1 (Attachment 1).

[4] American Beer Licensees comment at 3 (Attachment 2).

[5] Beer Distributors of Oklahoma comment at 1 (Attachment 3).

[6] Consumer Watchdog comment at 1 (Attachment 4).

[proposed Final Judgment] and expresses its gratitude to the Department of Justice for addressing certain anticompetitive aspects of the proposed transaction and conduct in the mature marketplace after the closing of the transaction.'' [7]

Many of the public comments fall into one of three broad categories: (1) comments related to the restrictions imposed by the proposed Final Judgment on ABI's distribution practices and ownership of distributors, (2) comments related to ABI's ownership of craft brewers and beers, and (3) comments related to the brewery owned by MillerCoors in Eden, North Carolina (the ''Eden brewery''). There were other comments as well. Below are summaries of the issues raised by the commenters and the United States' responses to those issues.

A. Response to Comments on ABI's Distribution Practices

The principal harm alleged in the Complaint is the reduction in competition that would have resulted from ABI's acquisition of SABMiller's interest in MillerCoors. In the absence of a remedy, ABI's proposed acquisition of SABMiller would have given ABI a majority ownership interest in and 50% governance rights over MillerCoors. That would have eliminated head-to-head competition between the two largest brewers in the United States. Thus, the likely effect of the acquisition would have been to substantially lessen competition in the sale of beer to U.S. consumers both nationally and in every local market in the United States.

In addition, the Complaint alleged that ABI's acquisition of SABMiller would have increased ABI's incentive and ability to disadvantage its high-end rivals—such as brewers of craft and import beers—by limiting the distribution of their beers. With the elimination of MillerCoors as a competitive constraint, ABI's high-end rivals would have become a more important constraint on ABI's ability to raise beer prices. ABI would thus have had a greater incentive to invest resources in distributor acquisitions and to use practices that restrict its high-end rivals' access to distribution. Further, with control over the MillerCoors beer brands, ABI could have encouraged the distributors of both ABI brands and MillerCoors brands to limit their sales of ABI's high-end rivals' beer, which would likely have resulted in increased beer prices and fewer choices for consumers.

[7] Wholesale Beer Association Executives comment at 2 (Attachment 5).

The proposed Final Judgment secures a structural remedy to address the harm alleged in the Complaint. Specifically, the proposed Final Judgment requires ABI to divest SABMiller's equity and ownership stake in MillerCoors, as well as certain other assets related to MillerCoors' business and the Miller-branded beer business outside of the United States. The divestiture buyer, Molson Coors, acquired the assets necessary to maintain MillerCoors as an independent competitor. The proposed Final Judgment did not permit ABI to acquire any SABMiller asset that was used to compete in the markets for beer in the United States. Consequently, the divesture ensures that ABI's acquisition of SABMiller will not result in ABI's market share increasing or the U.S. beer industry becoming more concentrated.

1. The Restrictions on ABI's Distribution Practices Were Designed to Ensure that the Divestiture Adequately Addresses the Harm Alleged in the Complaint and Identified in the CIS

As the United States explained in the CIS, however, the divestiture to Molson Coors alone, without additional relief, could lead to conditions that might increase ABI's incentive to disadvantage its high-end rivals by limiting the distribution of their beers. The United States noted that unlike MillerCoors, which competed directly against ABI only in the United States, Molson Coors competes against ABI in multiple countries throughout the world. *See* CIS at 11. The United States also noted that ABI and Molson Coors have cooperative arrangements related to beer brewing and distribution in certain countries in Eastern Europe. *Id.* The United States stated:

The change in ownership of MillerCoors—from a joint venture between SABMiller and Molson Coors to a wholly owned subsidiary of Molson Coors—will increase the number of highly concentrated markets across the world in which ABI competes directly against Molson Coors. By increasing the number of markets in which ABI and Molson Coors compete, the divestiture of SABMiller's interest in MillerCoors to Molson Coors could facilitate coordination between ABI and Molson Coors in the United States. For example, this multimarket contact could lead Molson Coors and ABI to be more accommodating to each other in the United States in order to avoid provoking a competitive response outside the United States or disrupting their cooperative business arrangements in other countries. Coordination could also be facilitated by the existing and newly-created cooperative agreements between ABI and Molson Coors around the world.

If the divestiture facilitates coordination between ABI and Molson Coors, it would also increase ABI's incentive to limit competition from its high-end rivals. This is because competition from high-end rivals would become an even more important constraint on the ability of ABI and Molson Coors to increase the prices of their beers across all segments. As a result, following a divestiture to Molson Coors, ABI may have a greater incentive to impede the growth and reduce the competitiveness of its high-end rivals by limiting their access to effective and efficient distribution. The extent to which craft and other brewers in the United States are able to compete with ABI and Molson Coors will thus affect the likelihood of the divestiture to Molson Coors leading to unilateral or coordinated anticompetitive effects.

Id. at 12.

For these reasons, the restrictions on ABI's distribution practices in Section V of the proposed Final Judgment were crafted in order to preserve and promote competition in the U.S. beer industry by limiting ABI's ability to disadvantage its rivals in their efforts to compete for consumer demand. As a result, Section V of the proposed Final Judgment prevents ABI from engaging in distribution practices that long pre-dated the announcement of its proposed acquisition of SABMiller.

For example, Section V of the proposed Final Judgment eliminates certain restrictions that ABI had placed on Independent Distributors [8] that were designed to encourage them to sell and promote ABI's Beer brands over the Beer brands of ABI's competitors. Section V also prohibits ABI from compensating Independent Distributors based upon the amount of sales the Independent Distributor makes of ABI Beer relative to the Beer of ABI's competitors. Moreover, Section V broadly prohibits ABI from rewarding, penalizing, or in any other way conditioning its relationship with Independent Distributors on the Distributor's sales, marketing, advertising, promotion, or retail placement of Third-Party Brewers' Beers.

Accordingly, the proposed Final Judgment provides an effective and appropriate remedy for the likely competitive harm arising out of ABI's acquisition of SABMiller by:

- preventing ABI from increasing its market share in the U.S. and further concentrating the U.S. beer industry through its acquisition of SABMiller;
- preserving head-to-head competition between ABI and its largest U.S. competitor, MillerCoors;
- granting MillerCoors ownership rights of Miller beer brands and perpetual, royalty-free licenses to products for which it previously paid royalties;

[8] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the proposed Final Judgment.

- placing certain restrictions on ABI's distribution practices and ownership of distributors; and
- requiring ABI to provide the United States with notice of future acquisitions, including non-reportable acquisitions of beer distributors and craft brewers, prior to their consummation.

As described below, some commenters urged the Department to place additional restrictions on ABI's relationships with Independent Distributors.

2. Comments Regarding ABI's Ability Under Section V.D to Condition Incentives, Programs, or Contractual Terms on ABI's Percentage of Beer Industry Sales in a Geographic Area

a. Summary of Comments

So long as ABI does not ''require or encourage an Independent Distributor to provide less than best efforts to the sale, marketing, advertising, retail placement, or promotion of any Third-Party Brewer's Beer or to discontinue the distribution of a Third-Party Brewer's Beer,'' Section V.D of the proposed Final Judgment permits ABI to ''condition incentives, programs, or contractual terms based on an Independent Distributor's volume of sales of Defendant ABI's Beer, the retail placement of Defendant ABI's Beer, or on Defendant ABI's percentage of Beer industry sales in a geographic area (such percentage not to be defined by reference to or derived from information obtained from Independent Distributors concerning their sales of any Third-Party Brewer's Beer).'' Three commenters urged that Section V.D be revised to eliminate entirely ABI's ability to condition incentives, programs, or contractual terms on ABI's percentage of Beer industry sales in a geographic area.[9]

b. Allowing ABI to Condition Incentives, Programs, or Contractual Terms on ABI's Percentage of Beer Industry Sales in a Geographic Area Does Not Undermine the Effectiveness of the Proposed Final Judgment

At the time the Complaint was filed, ABI's Wholesaler Equity Agreement prohibited an Independent Distributor from requesting that a bar replace an ABI tap handle with a competitor's tap handle, requesting that a retailer replace ABI shelf space with a competitor's beer, and compensating its salespeople for their sales of competing beer brands (such as a dollar-per-case incentive), unless the Independent Distributor provided the same incentives for sales of certain ABI beer brands. *See* Compl. at ¶¶ 27–28.

Section V of the proposed Final Judgment prohibits ABI from continuing these practices which encouraged Independent Distributors to favor ABI beer over competing beers in their portfolios. Consequently, the proposed remedy secures substantial benefits for millions of Americans and advances competition. At the same time, the proposed Final Judgment recognizes that ABI has a legitimate interest in Independent Distributors growing ABI's percentage of all Beer industry sales in the areas in which the Distributors sell ABI's Beer. As a result, the proposed Final Judgment appropriately acknowledges ABI's interest in competing while at the same time prohibiting ABI's prior practices of conditioning incentives, programs, and contractual terms on an Independent Distributor's sale of ABI beer relative to the sale of Third-Party Brewers' beer *in the Distributor's portfolio.*

Thus, giving deference to the Department's assessment, and considered in conjunction with the proposed Final Judgment's other distribution-related relief, allowing ABI to condition incentives, programs, and contractual terms on ABI's percentage of Beer industry sales in a geographic area is within the reaches of the public interest.

3. Comments Regarding the Allocation to ABI's Beers of an Independent Distributor's Annual Spending on Beer Promotions and Incentives

a. Summary of Comments

Section V.D of the proposed Final Judgment provides that ''Defendant ABI may require an Independent Distributor to allocate to Defendant ABI's Beer a proportion of the Independent Distributor's annual spending on Beer promotions and incentives not to exceed the proportion of revenues that Defendant ABI's Beer constitutes in the Independent Distributor's overall revenue for Beer sales in the preceding year.'' Three commenters urged that this language be revised, either to make the allocation based on the proportion of the Independent Distributor's revenues received in the current year[10] or to provide a carve-out for products newly added to the Distributor's portfolio.[11] In particular, commenter National Beer Wholesalers Association (''NBWA'') described marketing as a forward-looking investment and expressed concern that Section V.D allows ABI to require an Independent Distributor to set marketing spend on backward-looking sales data.[12] Commenter Virginia Beer Wholesalers Association, Inc. expressed concern that Section V.D ''would expose an Independent Distributor to demands that it spend 100% of its promotion funds on ABI products in the *current* year if that distributor derived 100% [of] its revenues from the sale of ABI products in the *prior* year. In such case, ABI could block the distributor from spending *any* of its own budget dollars towards the marketing of newly acquired Third-Party Brewer's products for an entire year.'' [13]

b. Allowing ABI to Require a Proportional Allocation of an Independent Distributor's Annual Spending on Beer Promotions and Incentives Based on Previous-Year Beer Sales Does Not Undermine the Effectiveness of the Proposed Final Judgment

This provision protects competition while also recognizing that ABI has a legitimate competitive interest in encouraging Independent Distributors to allocate to ABI a proportion of their annual spending on Beer promotions and incentives. As the Department explained in the CIS, in any geographic area, an Independent Distributor ''provides the exclusive path to market for ABI's beers, and therefore ABI may be reluctant to invest in its distributors without some assurance that those investments will not be used primarily to benefit its rivals.'' CIS at 21. As a result, the proposed Final Judgment allows ABI to require a proportional allocation of an Independent Distributor's spending on Beer promotions and incentives based on the Independent Distributor's previous-year overall revenues. The primary reason that prior-year data were chosen as the measure was to promote accuracy and certainty for the calculations—something that would not be possible if, as proposed by some commenters, the allocation were based on projections for current-year revenues.

The Department acknowledges that, because the proposed Final Judgment does not provide a carve-out for products newly added to an Independent Distributor's portfolio, the possibility exists that if an Independent Distributor derived 100% of its prior-

[9] Consumer Watchdog comment at 6–7; Brewers Association comment at 4 (Attachment 6); Professor Calkins comment at 3–4 (Attachment 7).

[10] Brewers Association comment at 6–7; NBWA comment at 20–21 (Attachment 8).

[11] Brewers Association comment at 7; NBWA comment at 20–22; Virginia Beer Wholesalers Association, Inc. comment at 4.

[12] NBWA comment at 20–21.

[13] Virginia Beer Wholesalers Association, Inc. comment at 4 (emphasis in original).

year revenues from ABI Beer, and the Independent Distributor added to its portfolio a Third-Party Brewer's Beer, ABI could prevent a Distributor from allocating any of its own promotional spending to the Third-Party Brewer's Beer in the year the Distributor started selling it. However, this possibility does not take the proposed Final Judgment outside the public interest.

First, at the time the Department filed the Complaint, the vast majority of Independent Distributors already derived some of their revenues from Third-Party Brewers' Beer. Second, there are alternative avenues for promotion of a newly added product to an Independent Distributor's portfolio. For example, the proposed Final Judgment does not restrict or prevent Third-Party Brewers from providing money to Independent Distributors to promote and incentivize Independent Distributors to sell the Third-Party Brewers' Beer—including products newly added to an Independent Distributor's portfolio. If a Third-Party Brewer provides to an Independent Distributor a dollar-per-case incentive to sell a new Beer product, that dollar-per-case amount would not be promotional spending *by the Independent Distributor* and therefore would not be included in the calculation of the Distributor's spending on Beer promotions and incentives. As a result, an Independent Distributor that sold only ABI Beer in the previous year could use funds provided by the Third-Party Brewer to promote a Third Party Brewer's Beer that it was newly distributing—even in the first year the Distributor added the Beer to its portfolio. Moreover, once an Independent Distributor established revenues for a newly distributed product, ABI could not demand in the next year that the Distributor spend 100% of its promotion funds on ABI products.

Finally, Section V.D of the proposed Final Judgment improves the status quo by placing a restriction—where none existed before—on ABI's ability to demand that Independent Distributors allocate more than a proportional amount of their spending on Beer promotions and incentives to the ABI Beer in their portfolios. Thus, giving deference to the Department's assessment, allowing ABI to require a proportional allocation of an Independent Distributor's annual spending on Beer promotions and incentives based on the Independent Distributor's previous-year overall revenues is within the reaches of the public interest.

4. Comments Regarding the Effect of the Proposed Final Judgment on Independent Distributors' Best Efforts to Market, Advertise, Place, Promote, and Sell Third-Party Brewers' Beer

a. Summary of Comments

Two comments questioned how ABI can both be prohibited from preventing Independent Distributors from using their best efforts to sell, market, advertise, or promote any Third-Party Brewer's Beer while at the same time being allowed to require Independent Distributors to use their best efforts to sell, market, advertise, or promote ABI's Beer.[14]

b. Allowing ABI to Require Best Efforts From Independent Distributors to Market and Sell ABI Beer Does not Conflict With Independent Distributors Also Providing Best Efforts to Market and Sell Third-Party Brewers' Beer

The Department does not find the provisions (a) allowing ABI to require an Independent Distributor to provide best efforts to sell, market, advertise, or promote ABI's Beer and (b) prohibiting ABI from preventing an Independent Distributor from providing its best efforts regarding Third-Party Brewers' Beer, to be in conflict. Section V.D.5 of the proposed Final Judgment prohibits ABI from ''[p]reventing an Independent Distributor from using best efforts to sell, market, advertise, or promote any Third-Party Brewer's Beer, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of the Third Party Brewer's Beer in a geographic area.'' Section V.D continues in relevant part: ''Notwithstanding the foregoing, nothing in this Final Judgment shall prohibit Defendant ABI from entering into or enforcing an agreement with any Independent Distributor requiring the Independent Distributor to use best efforts to sell, market, advertise, or promote Defendant ABI's Beer, which may be defined as efforts designed to achieve and maintain the highest practicable sales volume and retail placement of Defendant ABI's Beer in a geographic area.'' An Independent Distributor may provide its best efforts to competing brands of Beer in its portfolio.

[14] Yuengling comment at 13, 15 (Attachment 9); Professor Calkins comment at 3.

5. Comments Regarding the Restrictions on ABI's Ability to Disapprove the General Managers and Successor General Managers of Independent Distributors

a. Summary of Comments

Section V.E of the proposed Final Judgment prohibits ABI from disapproving ''an Independent Distributor's selection of a general manager or successor general manager based on the Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.'' Three comments argued for broadening or clarifying these restrictions. Virginia Beer Wholesaler Association urged the Department to prohibit ABI from requiring that the general manager of an Independent Distributor purchase an equity stake in the Independent Distributor.[15] Professor Calkins urged the Department to prohibit ABI from disapproving an Independent Distributor's selection of a general manager or successor general manager based on the Independent Distributor's sale of craft beer or failure to meet certain ABI-imposed thresholds for Beer sales or tap handles.[16] NBWA recommended that the language in Section V.E describing ABI's disapproval rights be made identical to certain language in Section V.F.[17] None of these concerns should affect the Court's public interest determination.

b. Section V.E Appropriately Restricts ABI's Ability to Disapprove the General Managers and Successor General Managers of Independent Distributors

First, the fact that ABI may require a general manager of an Independent Distributor to purchase an equity stake in the Independent Distributor was not at issue in the ABI/SABMiller transaction. For that reason, the Complaint does not allege and the CIS does not identify any harm to competition resulting from requiring any such equity stake. Accordingly, a remedy directed to such a requirement is beyond the scope of this APPA proceeding, and the absence of such a remedy does not provide a basis for rejecting the proposed Final Judgment. *See US Airways,* 38 F. Supp. 3d at 76 (' 'Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint. . . .' '' (quoting *United*

[15] Virginia Beer Wholesalers Association comment at 3–4.

[16] Professor Calkins comment at 4.

[17] NBWA comment at 23.

States v. Graftech Int'l, No. 10–cv–2039, 2011 WL 1566781, at *13 (D.D.C. Mar. 24, 2011)). The proposed Final Judgment should not be measured by how it might resolve general industry concerns about ownership of Independent Distributors that are not implicated in this matter.

Second, while Section V.E of the proposed Final Judgment does not refer to specific measures of an Independent Distributor's success in selling ABI Beer such as ABI-imposed volume thresholds for Beer sales or tap handles, it does restrict ABI's general manager disapproval rights related to an Independent Distributor's success in selling Third-Party Brewers' Beer. Accordingly, Section V.E properly balances ABI's legitimate interest in ensuring that Independent Distributors have managers that can successfully market and sell ABI Beer in their respective distribution territories against the danger of allowing ABI to disapprove a general manager or successor general manager based on the Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.

Finally, with respect to commenter NBWA's characterization of the restrictions on ABI in Section V.E as inconsistent with the restrictions on ABI in V.F,[18] no problematic inconsistency exists. Both Sections V.E and V.F restrict ABI's ability to consider ''the Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer'' as appropriate to the respective circumstance.

Thus, giving deference to the Department's assessment, the restrictions in the proposed Final Judgment on ABI's ability to disapprove the general manager and successor general manager of Independent Distributors are within the reaches of the public interest.

6. Comment Regarding Restrictions on ABI's Exercise of Rights Related to the Transfer of Control, Ownership, or Equity of Distributors

a. Summary of Comment

Section V.F of the proposed Final Judgment places restrictions on ABI in connection with its exercise of rights related to the transfer of control, ownership, or equity of Distributors. Commenter D.G. Yuengling & Son, Inc. (''Yuengling'') asks that ABI's ability to exercise those rights be eliminated or, alternatively, that Section V.F be broadened to require ABI to explain any decision that it makes when exercising a right related to the transfer of control, ownership, or equity of a Distributor and to set forth a procedure by which the Department will review ABI's decision.[19]

b. Section V.F Appropriately Restricts ABI's Exercise of Rights Related to the Transfer of Control, Ownership, or Equity of Distributors

Section V.F restricts ABI's ability to exercise any rights related to the transfer, ownership, control, or equity of Distributors by prohibiting ABI from giving weight to or basing its decision to exercise such rights on a Distributor's business relationship with a Third-Party Brewer. These restrictions are intended to prevent ABI from using its rights over management or ownership changes to promote alignment by selecting new owners because they have demonstrated a willingness not to carry or promote rival brands. Thus, the restrictions help ensure that ABI cannot exercise its rights related to the ownership or control of Distributors in a manner that harms competition or disadvantages ABI's rivals. An absolute ban is unnecessary, especially because competitively permissible reasons could exist for ABI to seek to exercise such rights. In addition, pursuant to Section VIII.B, a Monitoring Trustee will monitor ABI's compliance with Section V.F and recommend appropriate remedial measures if the Monitoring Trustee determines that ABI has violated its provisions. Should the Monitoring Trustee or anyone else bring an alleged violation to the Department's attention, the Department already has well-established procedures for reviewing such allegations. No additional procedures need be specified in the proposed Final Judgment.

Giving deference to the Department's assessment, imposing the Section V.F restrictions on ABI's exercise of rights related to the transfer of control, ownership, or equity in any Distributor to any other Distributor is within the reaches of the public interest.

7. Comments Regarding Restrictions Related to ABI-Owned Distributors

a. Summary of Comments

Section V.B of the proposed Final Judgment prohibits ABI from acquiring any equity interests in, or any ownership or control of the assets of, a Distributor if more than 10% of ABI's Beer in the United States would be sold by ABI-Owned Distributors after the acquisition. Five comments called for the proposed Final Judgment to be amended to place additional restrictions on ABI's ownership of Distributors, ranging from a total ban on ABI's acquisition of additional Distributors to a state-by-state rather than a nationwide volume cap to requiring ABI to divest all ABI-Owned Distributors.[20] Two comments also called for a more expansive definition of ABI-Owned Distributor.[21]

b. Additional Restrictions Related to ABI-Owned Distributors Are Not Necessary

Commenter Beer Distributors of Oklahoma urged that ABI be required to divest all ABI-Owned Distributors,[22] and commenters Consumer Watchdog, Brewers Association, NBWA, and Ninkasi Brewing Company (''Ninkasi'') urged that ABI be prevented from acquiring any additional Distributors during the term of the proposed Final Judgment.[23] Such restrictions are not necessary to remedy the harms alleged in the Complaint or identified in the CIS. *See US Airways,* 38 F. Supp. 3d at 76 (''[T]he court 'must accord deference to the government's predictions about the efficacy of its remedies.''' (quoting *SBC Commc'ns,* 489 F. Supp. at 17)).

Moreover, nothing in the proposed Final Judgment provides ABI with any antitrust exemption for acquisitions of Distributors—even if ABI remains below the 10% limit set forth in Section V.B of the proposed Final Judgment. To the contrary, the notification provisions in Section XII of the proposed Final Judgment, which require ABI to notify the Department about certain Distributor acquisitions that are not otherwise reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the ''HSR Act''), ensure that the Department will have the opportunity to evaluate the likely competitive effects of such Distributor acquisitions before they are completed—even if the acquisition would keep ABI under the 10% cap.

Thus, giving deference to the Department's assessment, neglecting to place a total ban on future Distributor acquisitions does not place the proposed Final Judgment outside the reaches of the public interest.

[18] NBWA comment at 23.

[19] Yuengling comment at 9–12, 14.

[20] Beer Distributors of Oklahoma comment at 3–5; Consumer Watchdog comment at 6; Brewers Association comment at 5–6; NBWA comment at 13–15; Ninkasi comment at 1–2 (Attachment 10).

[21] NBWA comment at 16–19; Wholesale Beer Association Executives comment at 7–9.

[22] Beer Distributors of Oklahoma comment at 3–4.

[23] Consumer Watchdog comment at 6; Brewers Association comment at 5–6; NBWA comment at 15; Ninkasi comment at 1–2.

c. Section V.B Appropriately Restricts ABI's Ability to Increase the Volume of Beer Sold By ABI-Owned Distributors

(i) A Nationwide Restriction is Appropriate

Commenters Beer Distributors of Oklahoma, NBWA, and Consumer Watchdog questioned the proposed Final Judgment for imposing a 10% cap under Section V.B on a nationwide level, rather than imposing a 10% cap in each state in which ABI-Owned Distributors operate.[24] The fact that the 10% cap is calculated based on ABI's national Beer sales does not provide a basis for concluding that the proposed Final Judgment is not in the public interest.

The Department was aware when it negotiated the proposed Final Judgment that ABI is prohibited in some states from owning Distributors and, accordingly, in states where it is allowed to own Distributors, ABI may sell more than 10% of its Beer volume through ABI-Owned Distributors. The imposition of a 10% nationwide cap—where no cap existed before—on the volume of Beer ABI can sell through ABI-Owned Distributors is a meaningful restriction on ABI's ability to restrict the sale of Third-Party Brewer's Beer through the acquisition of Distributors, especially considering, as the Department alleged in the Complaint, that ABI already sells approximately 9% of its beer in the United States through ABI-Owned Distributors. *See* Compl. ¶ 25.

In addition, as discussed above, the proposed Final Judgment does not convey antitrust immunity upon ABI for any future Distributor acquisitions. Should a future proposed Distributor acquisition implicate competitive concerns in a particular state or region due to high concentration levels or other reasons, the Department will have the opportunity to review such acquisition. And Section XII of the proposed Final Judgment ensures that the Department will have the necessary notice to do so.

Thus, giving deference to the Department's assessment, the 10% nationwide cap placed on the volume of Beer ABI-Owned Distributors may sell in the Territory is within the reaches of the public interest.

(ii) Safeguards Exist to Prevent ABI From Circumventing the Cap

Commenters NBWA and Brewers Association additionally suggested that ABI could circumvent the 10% limit by selling existing ABI-Owned Distributors to ''friendly'' Independent Distributors and then buying more Distributors.[25] The purpose of the Section V.B cap, however, is to limit the volume of Beer sold by ABI-Owned Distributors; other provisions in the proposed Final Judgment provide safeguards that reduce ABI's influence and control over Independent Distributors, including Sections V.D, V.E, and V.F.

Commenter Professor Calkins asked the Department to clarify whether ABI can circumvent the 10% cap by acquiring a Distributor that specialized in non-ABI craft Beers and then, post-acquisition, having the Distributor sell ABI craft Beers instead.[26] The Department clarifies that under the proposed Final Judgment, once a Distributor becomes an ABI-Owned Distributor, the volume of ABI Beer the Distributor sells will count toward the 10% cap.

Finally, commenter Wholesale Beer Association Executives urged the Department to include in the Section V.B 10% calculation the sales volume of any Distributor for which ABI exercises its ''match-and-redirect'' right—that is, assigning to the Independent Distributor of ABI's choice the ability to purchase another Distributor upon certain agreed-upon terms—because ABI ''often [assigns] that right to a preferred distributor who often conforms to the policies regarding competing brand portfolios that are prohibited by the [proposed Final Judgment].'' [27]

As noted above with respect to NBWA and Brewers Association's concerns about ABI circumventing the Section V.B cap, the purpose of the cap is to limit the volume of Beer sold by ABI-Owned Distributors; other provisions in the proposed Final Judgment provide safeguards that reduce ABI's influence and control over Independent Distributors, including ''friendly'' Independent Distributors and those who may benefit from ABI's exercise of its ''match-and-redirect'' right. For example, Section V.D.1 of the proposed Final Judgment prohibits ABI from conditioning the availability of ABI's Beer on an Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer, and Section V.D.3 prohibits ABI from conditioning any agreement or program with an Independent Distributor on the fact that an Independent Distributor sells a Third-Party Brewer's Beer outside of the geographic area in which the Independent Distributor sells ABI's Beer.

(iii) The Definition of ABI-Owned Distributor is Appropriate

Commenters NBWA and Wholesale Beer Association Executives urged the Department to broaden the definition of ABI-Owned Distributor to include additional, partially-owned Distributors, because they contend that ABI effectively controls Distributors in which it has a less-than-50% ownership stake.[28] The proposed Final Judgment defines an ABI-Owned Distributor as ''any Distributor in which ABI owns more than 50% of the outstanding equity interests or more than 50% of the assets.'' [29] The 50% ownership threshold is appropriate because it provides certainty for determining which Distributors are ABI-Owned Distributors for purposes of enforcing the Final Judgment. A 50% ownership threshold is also consistent with how the Department defined ABI-Owned Distributors in the ABI/Grupo Modelo decree.[30]

Additionally, safeguards in other parts of Section V that reduce ABI's influence and control over Independent Distributors apply even where ABI has less than 50% ownership. For example, Section V.E of the proposed Final Judgment prohibits ABI from disapproving an Independent Distributor's selection of a general manager or successor general manager based on the Independent Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer, and Section V.F provides that, when exercising any right related to the transfer of control, ownership, or equity in any Distributor to any other Distributor, ABI shall not give weight to or base any decision to exercise such right upon either

[24] Beer Distributors of Oklahoma comment at 5–6; NBWA comment at 13–15; Consumer Watchdog comment at 6.

[25] NBWA comment at 13–14; Brewers Association comment at 5–6.

[26] Professor Calkins comment at 2.

[27] Wholesale Beer Association Executives comment at 9. The commenter refers to ABI's ''match-and-redirect'' right as ABI's right of first refusal.

[28] NBWA comment at 16–19; Wholesale Beer Association Executives comment at 8–9 (recommending a 25% ownership threshold).

[29] Similarly, the proposed Final Judgment defines ABI to include certain other entities ''in which there is majority (greater than 50%) or total ownership or control between [ABI] and any other person.'' Proposed Final Judgment at II.A. Thus, in response to NBWA's request for clarification (*see* NBWA comment at 14), if ABI owns a 31.6% share of Craft Brew Alliance, Craft Brew Alliance does not meet the definition of ABI, and Craft Brew Alliance Beer thus does not count as ABI Beer for the purpose of Section V.B's 10% cap.

[30] *See* Final Judgment at 3, *United States v. Anheuser-Busch InBev SA/NV,* 1:13–CV–00127 (Oct. 24, 2013) ('''ABI-Owned Distributor' means any Distributor in which ABI owns more than 50 percent of the outstanding equity interests as of the date of the divestiture of the Divestiture Assets.'').

Distributor's business relationship with a Third-Party Brewer—including, but not limited to, such Distributor's sales, marketing, advertising, promotion, or retail placement of a Third-Party Brewer's Beer.

For these reasons, the ownership threshold for ABI-Owned Distributors does not undermine the effectiveness of the proposed Final Judgment.

8. Comments Requesting that Section V's Distribution Restrictions Also be Made to Apply to Molson Coors

a. Summary of Comments

Four commenters asked that the distribution restrictions in Section V of the proposed Final Judgment—which apply only to ABI—also be made to apply to Molson Coors.[31] In support of its comment, Wholesale Beer Association Executives reported that Molson Coors has already begun to implement tactics of concern similar to those of ABI, such as aggressive acquisition of craft brewers.[32]

b. Molson Coors' Distribution Practices Are Outside the Scope of this Proceeding

Molson Coors is neither a defendant in this case nor a party to the proposed Final Judgment.[33] Final judgments typically do not apply to divestiture buyers, and this case does not warrant an exception. The Complaint does not allege that either MillerCoors or Molson Coors—unlike ABI—engaged in the type of restrictive distribution practices alleged in the Complaint. In fact, at the time the Complaint was filed, MillerCoors owned only one beer distributor in the United States, a Coors distributor in Denver, Colorado, and Molson Coors owned none.

If in the future Molson Coors were to acquire distributors or change its distribution practices in a manner that the Department believes might be anticompetitive, or to otherwise implement anticompetitive tactics as commenter Wholesale Beer Association Executives complains, the Department would have the ability to investigate those practices and seek appropriate relief if it determines that the practices violated the antitrust laws. Limiting the applicability of the proposed Final Judgment to ABI does not place the proposed Final Judgment outside the reaches of the public interest.

9. Comment Related to ABI's Obligation to Inform Independent Distributors of the Requirements of the Proposed Final Judgment

a. Summary of Comment

NBWA urged that the proposed Final Judgment be amended to require ABI to (1) include the Final Judgment as an amendment to ABI's agreements with Independent Distributors, and (2) state in its agreements with Independent Distributors that the Final Judgment will govern any conflict between the agreements and the Final Judgment.[34]

b. The Proposed Final Judgment Adequately Requires ABI to Inform Independent Distributors of the Requirements of the Final Judgment

Section V.I of the proposed Final Judgment requires that, within ten days of the entry of the Final Judgment, ABI provide the United States, for the United States to approve in its sole discretion, with a proposed form of written notification to be provided to any Independent Distributor that distributes ABI's Beer in the Territory. Such notification must (1) explain the practices prohibited by Section V of the Final Judgment, (2) describe the changes ABI is making to any programs, agreements, or any interpretations of agreements required to comply with Section V of the Final Judgment, and (3) inform the Independent Distributor of its right, without fear of retaliation, to bring to the attention of the Monitoring Trustee any actions by ABI which the Independent Distributor believes may violate Section V of the Final Judgment.

Requiring that the Final Judgment be made an amendment to ABI's existing agreements with its Independent Distributors would not increase the protections afforded to the Independent Distributors under Section V of the proposed Final Judgment. Requiring agreements with Independent Distributors to state that the Final Judgment will control in the event of a conflict with the language of the agreements would not increase the protections afforded to Independent Distributors. Nor would either requirement provide additional levels of notice to affected Distributors.

ABI will be required to provide notice of the Final Judgment to all of its Independent Distributors [35] and to comply with Section V of the proposed Final Judgment irrespective of any language to the contrary in its existing distribution agreements. Independent Distributors can raise their concerns with the Department or the Monitoring Trustee without fear of retaliation if ABI implements any programs, policies, or practices that an Independent Distributor believes violate Section V.

10. Comment Related to ABI's Ability to Terminate Independent Distributors

a. Summary of Comment

NBWA recommends that the proposed Final Judgment be modified to explicitly state that ABI may not terminate Independent Distributors based on their sales, promotion, advertising, marketing, or retail placement of Third-Party Brewers' Beer.[36]

b. The Proposed Final Judgment Already Prohibits ABI from Terminating an Independent Distributor Based on the Distributor's Sales, Promotion, Advertising, Marketing, or Retail Placement of a Third-Party Brewer's Beer

The proposed Final Judgment already explicitly prohibits ABI from terminating an Independent Distributor based on the latter's sales, promotion, advertising, marketing, or retail placement of a Third-Party Brewer's Beer. Section V.D prohibits ABI from penalizing or ''in any other way condition[ing] its relationship with'' an Independent Distributor based on ''the amount of sales the Independent Distributor makes of a Third-Party Brewer's Beer or the marketing, advertising, promotion, or retail placement of such Beer.'' Section V.H additionally prohibits ABI from discriminating against, penalizing, or otherwise retaliating against any Distributor because such Distributor raises, alleges, or otherwise brings to the attention of the Department or the Monitoring Trustee an actual, potential, or perceived violation of Section V of the Final Judgment.

[31] Virginia Beer Wholesalers Association comment at 3; Wholesale Beer Association Executives comment at 10–11; NBWA comment at 11–13; Consumer Watchdog comment at 7–8.

[32] Wholesale Beer Association Executives comment at 10–11.

[33] As required by Section V.A of the proposed Final Judgment, however, Molson Coors—in an amendment to its purchase agreement with ABI—has agreed not to cite the divestiture required by the proposed Final Judgment as a basis for modifying, renegotiating, or terminating any contract with any Distributor.

[34] NBWA comment at 22–23; *see also* Wholesale Beer Association Executives comment at 9–10.

[35] Independent Distributors will also be able to review the proposed Final Judgment and other court filings in this matter on the Department's public Web site. The Department will make the Final Judgment publicly available once the Court enters it. *See https://www.justice.gov/atr/case/us-v-anheuser-busch-inbev-sanv-and-sabmiller-plc.*

[36] NBWA comment at 25.

11. Other Comments Requesting that the Restrictions in Section V be Broadened

a. Summary of Comments

In addition to the above, commenters requested that the relief in Section V of the proposed Final Judgment be broadened in a variety of ways. For example, commenters asked that:

- ABI be prohibited from rewarding, penalizing, or otherwise conditioning its relationship with Independent Distributors based on their ''storage, warehousing, transportation or administration'' of a Third-Party Brewer's Beers; [37]
- ABI be prohibited from exercising its match-and-redirect right if the originally-proposed purchaser is otherwise qualified to sell ABI's Beer; [38]
- ABI be prohibited from exercising its match-and-redirect right or required when exercising its match-and-redirect right to pay the seller the full purchase price in consideration of its release of all brand rights for Third-Party Brewers' Beer without any additional consideration; [39]
- ABI be barred from financing, directly or indirectly, the operations of any Independent Distributor; [40] and
- ABI be barred from manipulating ''delivered price'' amounts to similarly situated Independent Distributors as a way to incentivize Independent Distributors to carry only ABI Beer brands.[41]

b. Section V Meaningfully Restricts ABI's Ability to Reward or Penalize Independent Distributors Based on Their Relationships with Third-Party Brewers

As discussed in the preceding sections, the changes to ABI's practices regarding Independent Distributors imposed by the proposed Final Judgment appropriately address the competitive effects of the transaction that are alleged in the Complaint and will increase Third-Party Brewers' access to effective distribution to the substantial benefit of millions of consumers nationwide. The failure to include the additional restrictions suggested by these commenters does not move the proposed Final Judgment outside the scope of the public interest.

B. Comments Related to ABI's Ownership of Craft Breweries

1. Summary of Comments

One commenter maintained that ABI should be prohibited from acquiring any brewers during the period of the Final Judgment.[42] Another commenter asked that craft beers owned by ABI be required to identify ABI's ownership on their packaging.[43]

2. The Proposed Final Judgment Adequately Ensures that the Department May Evaluate ABI's Acquisition of Craft Brewers

Restricting ABI from acquiring craft breweries or requiring ABI to label its craft beer as brewed by ABI is not necessary for the proposed divestiture to be effective in remedying the harms alleged in the Complaint. Although ABI has acquired multiple craft breweries over the past several years, those acquisitions were not at issue with respect to ABI's proposed acquisition of SABMiller, and the Complaint does not contain any allegations related to those acquisitions. Beer labeling similarly was not an issue implicated by the transaction and was not made a part of the Complaint. Accordingly, a remedy directed to such requirements is beyond the scope of this APPA proceeding, and the absence of such a remedy does not provide a basis for rejecting the proposed Final Judgment. *See US Airways,* 38 F. Supp. 3d at 76 (''`Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint. . . .'`'' (quoting *Graftech,* 2011 WL 1566781, at *13)).

In addition, Section XII of the proposed Final Judgment provides the Department with the ability to review ABI's acquisition of craft brewers in the United States, even if those acquisitions do not otherwise meet the filing thresholds of the HSR Act. As a result, the Department will be able to evaluate the likely competitive effects of any proposed acquisition of craft brewers by ABI and to challenge the transaction if the Department concludes that the proposed acquisition—whether by itself or in combination with other transactions or other conduct—is likely to substantially lessen competition in the U.S. beer industry.

C. Comments Related to the Eden Brewery

1. Summary of Comments

Both the North Carolina Department of Justice (''NC DOJ'') and the International Brotherhood of Teamsters (''Teamsters'') submitted comments asserting that the Department should have required the divestiture of the MillerCoors brewery in Eden, North Carolina. MillerCoors closed the Eden brewery in September 2016. Both the NC DOJ and Teamsters assert that the Department should have required such relief because the fact that MillerCoors announced the closure of its Eden brewery two days before ABI and SABMiller announced their merger negotiations raises concerns that MillerCoors had anticompetitive motives when deciding to close this brewery and declining to sell it to another brewer.[44] As additional support for their comments, the NC DOJ and the Teamsters also point to the Department's requirement in the final judgment in the ABI/Grupo Modelo transaction [45] that Constellation Brands, the divestiture buyer in that transaction, purchase and expand a legacy Grupo Modelo brewery in Mexico.

2. The Requested Divestiture of the Eden Brewery is Outside the Scope of this Action

The Department took the allegations about the closing of the Eden brewery seriously and considered the circumstances surrounding that closure during the Department's investigation of the transaction. Among other things, the Department obtained and reviewed documents related to the brewery closure, asked questions about its closure, and met with the relevant parties. In reviewing such information, the Department did not uncover evidence suggesting that MillerCoors' decision to close the Eden brewery was related to ABI's proposed acquisition of SABMiller. Accordingly, the Complaint did not allege that the Eden brewery closure was an anticompetitive effect of the transaction, nor did the Department seek relief related to the Eden brewery as part of the proposed Final Judgment.

The Department understands that the NC DOJ is conducting its own investigation into whether any competition-related laws have been violated in connection with the closure of the Eden brewery.[46] The NC DOJ's comment indicates that the evidence it has reviewed to date ''confirms [the NC DOJ's concerns] that anticompetitive motives may have played a part regarding the closure of the Eden brewery and the accompanying lack of meaningful effort to sell it.'' [47] The Department has great respect for the NC DOJ and has worked with that office cooperatively on many occasions. However, the Department made a

[37] NBWA comment at 20.

[38] Wholesale Beer Executives Association comment at 9.

[39] Yuengling comment at 14.

[40] Yuengling comment at 15.

[41] Yuengling comment at 15.

[42] Consumer Watchdog comment at 6.

[43] Ninkasi comment at 2.

[44] NC DOJ comment at 2 (Attachment 11); Teamsters comment at 23 (Attachment 12).

[45] Final Judgment at 13–16, *United States* v. *Anheuser-Busch InBev SA/NV,* 1:13–CV–00127 (Oct. 24, 2013).

[46] NC DOJ comment at 3.

[47] NC DOJ comment at 3.

decision, based on the evidence available to it at the time, not to allege that closure of the Eden brewery was a competitive effect of the transaction. Should the NC DOJ develop additional evidence, nothing in the proposed Final Judgment prevents the NC DOJ from seeking further relief under applicable federal or state laws—including relief related to the Eden brewery.

Additionally, the circumstances here are distinguishable from those in the ABI/Grupo Modelo matter. In ABI/Grupo Modelo, the Department required the divestiture buyer, Constellation, to purchase and expand the brewery in question because, in order for the divestiture to be effective, Constellation needed to be able to produce all Modelo-branded beer in Mexico but did not have its own Mexican brewery. As the Department noted in the Competitive Impact Statement in ABI/Grupo Modelo: ''Requiring the buyer of divested assets to improve those assets for the purposes of competing against the seller is an exceptional remedy that the United States found appropriate under the specific set of facts presented here. . . . No other combination of Modelo's brewing assets would have properly addressed the competitive harm caused by the proposed merger and allowed the acquirer of the Divestiture Assets to compete as effectively and economically with ABI as Modelo does today.'' [48] By contrast, in this case, the ABI/SABMiller transaction and divestiture to Molson Coors does not affect the brewing capacity of MillerCoors in the United States.

Accordingly, the NC DOJ's and the Teamsters' concerns about the closure of the Eden brewery do not provide a basis for questioning the Department's determination—which is entitled to deference—that the proposed Final Judgment provides an effective and appropriate remedy for the likely anticompetitive harm arising out of ABI's proposed acquisition of SABMiller.

D. Other Comments

Commenters raised a variety of other procedural and substantive concerns, recommending that the proposed Final Judgment be amended in numerous respects. As discussed below, these recommendations include: requiring ABI to adopt an updated antitrust compliance policy; [49] expanding the role of the Monitoring Trustee; [50] expressly stating that any action taken by ABI remains subject to applicable antitrust laws; [51] preventing ABI-Owned Distributors from managing or making recommendations concerning the schematics of retailers; [52] restricting ABI from vertically integrating into the retail channel; [53] preventing ABI from using sales data from third parties to punish distributors; [54] modifying the term of the proposed Final Judgment; [55] and clarifying certain references to Third Party Brewers.[56] Commenters also raised questions about the Department's use of certain data sources in the Complaint and proposed Final Judgment [57] and recommended that in the future the Department publish on its public website the end of the 60-day public comment period.[58]

1. Comments Related to a Potential Antitrust Compliance Policy

a. Summary of Comments

Consumer Watchdog and NBWA urged the Court to require ABI to update its antitrust compliance policy, with mandatory employee training.[59] Consumer Watchdog contended that the Department should approve ABI's antitrust compliance policy, while NBWA recommended that the Monitoring Trustee be tasked with drafting and overseeing ABI's compliance policy. NBWA noted that the Department required mandatory compliance programs in *United States* v. *Apple, Inc.* and *United States* v. *Bazaarvoice, Inc.*[60]

b. The Absence of a Required Compliance Policy Does Not Undermine the Effectiveness of the Proposed Final Judgment

The circumstances here do not warrant requiring ABI to have an antitrust compliance policy approved by the Department or the Monitoring Trustee. The Complaint does not allege that ABI has previously violated the antitrust laws. Rather, it asserts that ABI's acquisition of SABMiller would violate Section 7 of the Clayton Act. Moreover, the Complaint does not contain any allegations related to ABI's antitrust compliance policies.

Those circumstances distinguish this case from *Apple* and *Bazaarvoice.* In *Apple,* the Department argued that ''serious violations of the antitrust laws occurred at Apple while its current program was in effect, and they were orchestrated by key executives and even a member of Apple's legal team.'' [61] In addition, Apple's counsel and a person involved in the antitrust violation could not recall receiving antitrust compliance training.[62] *Bazaarvoice* involved a Final Judgment that was ordered after a trial had determined that the defendant had violated the antitrust laws.[63] Neither of those circumstances is analogous to this case where ABI has agreed to a settlement with the Department without an allegation or finding that ABI previously violated the antitrust laws. Thus, the lack of a requirement for a compliance policy does not undermine the effectiveness of the proposed Final Judgment.

2. Comments Related to the Monitoring Trustee

a. Summary of Comments

Consumer Watchdog recommended that the Monitoring Trustee be given the ability to interpret the proposed Final Judgment broadly to prevent ABI from ''getting around'' its terms.[64] As discussed above, NBWA recommended that the Monitoring Trustee be tasked with drafting and overseeing the compliance policy that NBWA urged was necessary.[65] NBWA also recommended that the Monitoring Trustee's appointment should be for the full ten-year term of the proposed Final Judgment.[66] The Virginia Beer

[48] Competitive Impact Statement at 13, *United States* v. *Anheuser-Busch InBev SA/NV,* 1:13–CV–00127 (Apr. 19, 2013).

[49] Consumer Watchdog comment at 7; NBWA comment at 24–25.

[50] Consumer Watchdog comment at 8; NBWA comment at 23–24.

[51] Professor Calkins comment at 2–3.

[52] Ninkasi comment at 2.

[53] American Beverage Licensees comment at 1–3.

[54] NBWA comment at 20–22.

[55] NBWA comment at 24.

[56] Brewers Association comment at 3.

[57] American Beverage Licensees comment at 4; Beer Distributors of Oklahoma comment at 2.

[58] Professor Calkins comment at 1–2.

[59] NBWA comment at 24–25; Consumer Watchdog comment at 7.

[60] NBWA comment at 25; *see* Final Judgment at 11, *United States* v. *Apple, Inc.,* No. 1:12–cv–02826 (S.D.N.Y. Sept. 5, 2015) (''The External Compliance Monitor shall have the power and authority to review and evaluate Apple's existing internal antitrust compliance policies and procedures and the training program required by Section V.C of this Final Judgment, and to recommend to Apple changes to address any perceived deficiencies in those policies, procedures, and training.''); Third Amended Final Judgment at 9, *United States* v. *Bazaarvoice, Inc.,* No. 3:13–cv–00133 (N.D. Cal. Dec. 2, 2014) (''Defendant shall designate, within ninety (90) days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Defendant with responsibility for administering Defendant's antitrust compliance program and helping to ensure compliance with this Final Judgment.'').

[61] Memorandum in Support of Plaintiffs' Revised Proposed Injunction at 5–6, *United States* v. *Apple, Inc.,* No 1:12–cv–02826 (S.D.N.Y. Aug. 13, 2013).

[62] Memorandum in Support of Plaintiffs' Revised Proposed Injunction at 6, *United States* v. *Apple, Inc.,* No 1:12–cv–02826 (S.D.N.Y. Aug. 13, 2013).

[63] *See United States* v. *Bazaarvoice, Inc.,* No. 13–cv–00133, 2014 WL 203966 (N.D. Cal. Jan. 8, 2014).

[64] Consumer Watchdog comment at 8.

[65] NBWA comment at 24–25.

[66] NBWA comment at 23–24.

Wholesalers Association urged that the proposed Final Judgment include specific timelines for both the submission of recommendations by the Monitoring Trustee and the acceptance, modification, or rejection of those recommendations by the Department, and also that the proposed Final Judgment be amended to require timely publication of the Monitoring Trustee's recommendations to the Department and the ultimate disposition of the recommendations.[67]

b. The Monitoring Trustee Already Has the Ability to Monitor ABI's Compliance with the Proposed Final Judgment

The Monitoring Trustee has been appointed by the Department and approved by the Court to help ensure that the proposed Final Judgment will be properly enforced. (*See* Docket Entry 13 (Order approving United States' appointment of Monitoring Trustee)). The Monitoring Trustee works closely with and regularly reports to the Department and, as appropriate, will report to the Court. If the Monitoring Trustee has particular concerns, he can bring those concerns to the attention of the Department and the Court. The Department and the Court can then appropriately respond to those concerns or empower the Monitoring Trustee to take appropriate actions to address those concerns. The powers possessed by the Monitoring Trustee are adequate to effectively monitor ABI's compliance with the proposed Final Judgment.

Under Section VIII.I of the proposed Final Judgment, the Monitoring Trustee must serve until the sale of all the Divestiture Assets is finalized, the Transition Services Agreements and the Interim Supply Agreements have expired, and all other relief has been completed as defined in Section V—unless the Department, in its sole discretion, authorizes the early termination of the Monitoring Trustee's service. Because ABI's obligations under Section V of the proposed Final Judgment will continue throughout the ten-year term of the decree, the Department may determine in its discretion that the Monitoring Trustee should serve the full ten-year term. NBWA has provided no basis for the Court to substitute NBWA's opinion that the Monitoring Trustee must be appointed for the full ten-year term of the proposed Final Judgment for the Department's discretion as to the appropriate length of the Monitoring Trustee's appointment, which, as noted above, could last throughout the duration of the decree.

Section VIII.H of the proposed Final Judgment requires the Monitoring Trustee to file reports every 90 days—or more frequently as needed—with the Department and, when appropriate, with the Court setting forth ABI's efforts to comply with its obligations under the proposed Final Judgment. Under Section VIII.B, if the Monitoring Trustee determines that ABI has violated the Final Judgment or breached a related agreement, the Monitoring Trustee must recommend an appropriate remedy to the Department, which, in its sole discretion, can accept, modify, or reject a recommendation to pursue a remedy. There is no sound basis for the Court to substitute for the Department's discretion a preference that the Monitoring Trustee's recommendations, and their resolutions, be made public.

3. Comment Related to the Application of Law to ABI

a. Summary of Comment

Wayne State University Law Professor Stephen Calkins indicated that the proposed Final Judgment should make clear that, notwithstanding the proposed Final Judgment, ABI remains subject to all existing antitrust laws.[68]

b. ABI Remains Subject to All Applicable Antitrust Laws

ABI remains subject to all applicable antitrust laws. The proposed Final Judgment does not restrict the application of those laws to ABI or provide an antitrust exemption to ABI for conduct addressed by the proposed Final Judgment. In fact, Section XII of the proposed Final Judgment, relating to future ABI acquisitions, places greater reporting requirements on ABI than required under the HSR Act to help ensure its compliance with applicable antitrust laws. Expressly stating in the proposed Final Judgment that the proposed Final Judgment does not supplant the antitrust laws is unnecessary.

4. Comment Related to ABI's Ability to Make Recommendations Regarding Retailer Schematics

a. Summary of Comment

Ninkasi asked that ABI-Owned Distributors be prohibited from managing shelf schematics at retailers that sell Beer.[69] Ninkasi states that ABI-Owned Distributors typically do not carry non-ABI Beer brands and that they set retailers' shelves in a way that maximizes ABI Beer sales ''over any rational set that would otherwise better serve the retail customer and consumer.''[70]

b. The Harms Alleged in the Complaint Do Not Justify the Requested Restrictions on Retail Shelf Schematics

As discussed above, the 10% cap in Section V.B appropriately restricts ABI's ability to use ABI-Owned Distributors to disadvantage Third-Party Brewers. Moreover, the Complaint does not include allegations related to ABI's influence over retailers, through ABI-Owned Distributors or otherwise. Nor do such concerns arise from the merger of ABI and SABMiller. Thus, Ninkasi's assertion that the Department should restrict ABI-Owned Distributors from managing retail shelf schematics concerns a matter outside the scope of this APPA proceeding. *See US Airways,* 38 F. Supp. 3d at 76 (''' 'Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint. . . .' '' (quoting *Graftech,* 2011 WL 1566781 at *13)).

5. Comment Related to ABI's Ability to Vertically Integrate into Retail Sales

a. Summary of Comment

American Beverage Licensees expressed concern that the ABI/SABMiller transaction, ''along with recent actions by ABI and the market reactions they might trigger, could lead to increased vertical integration and tied-house opportunities in the beverage alcohol marketplace,'' which American Beverage Licensees argues would ''be to the detriment of a competitive retail beverage alcohol environment.''[71] American Beverage Licensees stated that, over the past decade, ABI has ''encroached on traditional beer retailing establishments across the country, and now has direct brewery control of 30 or more on-premise beer retailing establishments that include thousands of seats with tied house opportunities.''[72] American Beverage Licensees further stated that the proposed Final Judgment ''stops at the water's edge and does not wade into concerns that [the ABI/SABMiller] merger could have future anticompetitive implications for America's independent beverage retailers.''[73]

[67] Virginia Beer Wholesalers Association comment at 2.

[68] Professor Calkins comment at 2–4.

[69] Ninkasi comment at 2.

[70] Ninkasi comment at 2.

[71] American Beverage Licensees comment at 1.

[72] American Beverage Licensees comment at 2.

[73] American Beverage Licensees comment at 3.

b. The Proposed Final Judgment Prevents ABI from Further Vertically Integrating as a Result of the SABMiller Acquisition and Provides the Department with Advance Notice of, and an Opportunity to Review, Future Acquisitions by ABI

The proposed Final Judgment requires ABI to divest SABMiller's entire U.S. business, which ABI did on October 12, 2016. Accordingly, the proposed Final Judgment prevents ABI from further vertically integrating through its acquisition of SABMiller. Moreover, Section XII of the proposed Final Judgment requires ABI to provide the Department with advance notice of, and an opportunity to evaluate, ABI's acquisition of Beer brewers—including brewers that own restaurants or tap rooms. This provision applies to acquisitions of brewers by ABI that would not otherwise be reportable under the HSR Act. Accordingly, the proposed Final Judgment provides the Department with an increased ability to evaluate ABI's acquisitions of brewers that own retail establishments and determine whether any such acquisitions could lead to anticompetitive effects.

Moreover, ABI's previous acquisitions of on-premise beer retailers were not at issue with respect to the ABI/SABMiller transaction, and the Complaint does not allege any harm to competition resulting from ABI's ownership of such retailers. Accordingly, a remedy directed to ABI's existing ownership of on-premise beer retailers would be outside of the scope of this APPA proceeding. *See US Airways,* 38 F. Supp. 3d at 76.

6. Comments Related to Use of Certain Data Sources in the Complaint and Proposed Final Judgment

a. Summary of Comments

American Beverage Licensees and the Beer Distributors of Oklahoma noted that in the Complaint, the Department uses IRI data to define ABI's market share and claim that IRI data is not an appropriate measure of market share because it focuses on large stores in the off-premise channel.[74] Separately, the Wholesale Beer Association Executives and NBWA each expressed concern that Section V.B of the Final Judgment relies on ABI's BudNet data to measure the percentage of Beer volume sold through ABI-Owned Distributors. NBWA stated that ''currently, there is no method for independently verifying the accuracy of ABI's self-reporting BudNet data and the accuracy of its reporting to DOJ.'' [75] Similarly, Wholesale Beer Association Executives stated, ''ABI's BudNet system is completely reliant on ABI's self-reporting, is not subject to transparent oversight, and could be subject to manipulation by ABI in calculating whether future acquisitions exceed the 10% threshold established by the [proposed Final Judgment].'' [76]

b. The Data Sources Referenced in the Complaint and the Proposed Final Judgment are Appropriate

The IRI data relied upon by the Department in calculating market shares provided the best available indicator of brewers' future competitive significance for the harms alleged in the Complaint. Using IRI data was therefore appropriate. Moreover, the Department did not use market share data to exclude any geographic areas from the required divestiture. Rather, the proposed Final Judgment required ABI to divest SABMiller's business throughout the United States. The Department's use of IRI data to measure market shares therefore does not affect whether the proposed Final Judgment was in the public interest.

The proposed Final Judgment does not require the use of BudNet data to measure the percentage of ABI Beer sold through ABI-Owned Distributors. Section V.B of the proposed Final Judgment prohibits ABI from acquiring ''any equity interests in, or any ownership or control of the assets of, a Distributor if (i) such acquisition would transform said Distributor into an ABI-Owned Distributor, and (ii) as measured on the day of entering into an agreement for such acquisition more than ten percent (10%), by volume, of Defendant ABI's Beer sold in the Territory would be sold through ABI-Owned Distributors after such acquisition.'' Attachment C to the proposed Final Judgment states that Beer volume shall be calculated based on ''the most comprehensive data [used by ABI at the time of the calculation] (currently, ABI's BudNet system), during the Relevant Period.'' As a result, the proposed Final Judgment contemplates the use of the most comprehensive data ABI has available. The Department believes that ABI, rather than a third party, will possess the most robust data to show the volume of its Beer sales. Moreover, both the Department and the Monitoring Trustee are well-positioned to investigate whether BudNet remains the most comprehensive data for ABI's Beer volume and ensure that ABI uses for this calculation the most comprehensive data then available.

7. Comments Related to ABI's Use of Third-Party Sales Data

a. Summary of Comments

The NBWA and Professor Calkins asserted that the proposed Final Judgment permits ABI to access sales information of its Independent Distributors, including Independent Distributors' sales of the Beers of Third-Party Brewers. They contended that ABI could use such information to take action against Independent Distributors due to the Independent Distributors' treatment of Third-Party Brewers or sales of Third-Party Brewers' Beer.[77]

b. The Proposed Final Judgment Protects Distributors Against ABI's Unauthorized Use of Third-Party Sales Data

The proposed Final Judgment limits the information that ABI can request or require an Independent Distributor to report. Under Section V.G, ABI cannot request or require that Independent Distributors report, ''whether in aggregated or disaggregated form, the Independent Distributor's revenues, profits, margins, costs, sales volumes, or other financial information associated with the purchase, sale, or distribution of a Third-Party Brewer's Beer.'' ABI can, however, request that Independent Distributors report ''general financial information . . . [for ABI] to assess the overall financial condition and financial viability of such Independent Distributor, or the percentage of total Beer revenues received by the Independent Distributor in the prior year associated with the purchase, sale, or distribution of Defendant ABI's Beer distributed by the Independent Distributor.'' But, as Section V.G makes clear, ABI cannot request from Independent Distributors information that would ''disclose or enable Defendant ABI to infer the disaggregated revenues, profits, margins, costs, or sales volumes associated with the Independent Distributor's purchase, sale, or distribution of Third-Party Brewers' Beer.''

The information that ABI is permitted to receive under the proposed Final Judgment is relevant to ABI's ordinary course business decisions that are unrelated to an Independent Distributor's sale of Third-Party Brewers' Beers. ABI has a legitimate interest in information about Independent Distributors' sales of ABI

[74] American Beverage Licensees comment at 4; Beer Distributors of Oklahoma comment at 2.

[75] NBWA comment at 15.

[76] Wholesale Beer Association Executives comment at 7.

[77] NBWA comment at 22; Professor Calkins comment at 4.

products. ABI also has a legitimate interest in assessing the financial health of Independent Distributors, and an Independent Distributor's total sales may be relevant to that assessment. The proposed Final Judgment properly balances ABI's legitimate need for information about its business partners against the danger of ABI's obtaining information that it could use to punish Independent Distributors for their sales of the Beers of Third-Party Brewers.

Nevertheless, the NBWA argues that the information that ABI is permitted to receive ''allows ABI to infer the aggregated revenue attributable to non-ABI beer'' and is thus ''sufficient to enable ABI to continue to target distributors that carry and promote rival brands.'' [78] The NBWA requests that ''any actions taken against distributors based on this information or any difference in treatment between distributors with a high proportion of ABI sales and those with a low proportion of ABI sales be seen as a violation of the [proposed Final Judgment].'' [79]

In fact, Section V.D of the proposed Final Judgment prohibits ABI from taking any adverse action against an Independent Distributor based upon that distributor's sales of a Third-Party Brewer's Beer. The proposed Final Judgment thus protects against the harm that the NBWA's comment seeks to prevent.

8. Comment Requesting to Extend and Periodically Reopen the Period for Public Comments

a. Summary of Comment

The Virginia Beer Wholesalers Association requested that the period for public comment be extended until after the Final Judgment has been entered and periodically reopened to allow interested parties the opportunity to review and comment on the changes that ABI proposes to make to its programs and agreements with Distributors to comply with the proposed Final Judgment.[80] The association writes that the closing of the public comment period prior to ABI's issuance of proposed amendments to its Distributor agreements and programs ''would severely limit the ability of distributors and regulators in Virginia, and in those states with similar franchise laws, to determine'' whether the proposed amendments would comply with state laws.[81]

b. No Extension or Reopening of the Comment Period is Necessary Because the Department Will Approve ABI's Descriptions of its Changes to its Programs and Agreements with Distributors

The Tunney Act sets forth specific procedures for the Court to approve consent judgments such as the proposed Final Judgment in this case. *See* 15 U.S.C. §§ 16(b)–(f). As Virginia Beer Wholesalers Association suggested, those procedures contemplate that the period for public comment will precede the entry of the Final Judgment. *See* 15 U.S.C. § 16(b). No extension or reopening of the comment period is necessary because the Department must approve ABI's descriptions of its changes to its programs and agreements with Independent Distributors. Section V.I requires ABI to obtain the Department's approval of the notification that ABI must provide to Independent Distributors (1) explaining the practices prohibited by Section V of the Final Judgment, (2) describing the changes ABI is making to any programs, agreements, or any interpretations of agreements required to comply with Section V of the Final Judgment, and (3) informing the Independent Distributor of its right, without fear of retaliation, to bring to the attention of the Monitoring Trustee any actions by ABI which the Independent Distributor believes may violate Section V. As discussed above, the Monitoring Trustee will monitor ABI's compliance with the proposed Final Judgment, including with respect to changes to its agreements and programs with Independent Distributors. Industry participants and other interested parties are also welcome to contact the Department to express concerns about ABI's compliance with, or potential violations of, the proposed Final Judgment. As expressly stated in Section XVII, during the ten-year term of the proposed Final Judgment, the Department may apply to the Court ''for further orders and directions as may be necessary or appropriate to carry out or construe [the] Final Judgment, to modify any of its provisions, to ensure and enforce compliance, and to punish violations of its provisions.''

Finally, nothing in the proposed Final Judgment prevents state regulators from determining whether ABI's programs or agreements with Independent Distributors violate state franchise or other laws.

9. Comments Related to Use of the Terms ''Third-Party Brewer's Beer'' and ''Third-Party Brewers' Beers''

a. Summary of Comments

Commenter Brewers Association requested that the Department clarify that the proposed Final Judgment's prohibitions related to ABI's distributor incentive programs apply not only to programs that specifically reference a particular Third-Party Brewer's Beer but rather to incentive programs that apply to Third-Party Brewers' Beer in the aggregate.[82] Similarly, Professor Calkins requested that the Department clarify that references to ''a Third-Party Brewer's Beer'' in proposed Final Judgment Sections V.D, V.E, and V.G apply individually and collectively to Third-Party Brewers.[83]

b. References to ''Third-Party Brewer's Beer'' Apply Individually and Collectively to Third-Party Brewers

The Department hereby clarifies that references to Third-Party Brewer's Beer apply individually and collectively to Third-Party Brewers.

10. Comment Related to the Term of the Proposed Final Judgment

a. Summary of Comment

Commenter NBWA requested that the proposed Final Judgment terminate not of its own accord at the end of a ten-year term but rather only after the Department, with the assistance of the Monitoring Trustee, has provided a report evaluating the competitive conditions in the U.S. beer industry and the Court has determined that the proposed Final Judgment has been effective.[84]

b. The Ten-Year Term is Appropriate

The typical term of the Department's consent decrees resolving violations of Section 7 of the Clayton Act is ten years. In addition, Section XVIII contemplates that the ten-year term of the proposed Final Judgment may be extended by the Court.

The purpose of the proposed Final Judgment is not to broadly ensure that the U.S. beer market is competitive, but rather to cure the antitrust violations alleged in the Complaint. Thus, it is not appropriate to extend the term of the proposed Final Judgment based on a determination that the competitive conditions of the U.S. beer industry are unsatisfactory. Although the proposed

[78] NBWA comment at 22.

[79] NBWA comment at 22.

[80] Virginia Beer Wholesalers Association comment at 1.

[81] Virginia Beer Wholesalers Association comment at 2.

[82] Brewers Association comment at 3.

[83] Professor Calkins comment at 2–4.

[84] NBWA comment at 24.

Final Judgment includes provisions that the Department believes will preserve competition in the U.S. beer industry that would likely be lost due to ABI's acquisition of SABMiller, generally improving the competitive conditions in the U.S. beer industry is beyond the scope of this APPA proceeding.

11. Comment Requesting the Department Publicize the Last Day of the 60-day Public Comment Period

a. Summary of Comment

Commenter Professor Calkins requested that the Department state on its public website the last day of the 60-day period for public comments on proposed consent decrees.[85]

b. The APPA Does Not Require the Department to State on its Public Website the Last Day for Public Comments on Consent Decrees

The APPA sets forth specific procedures for the Court to approve consent judgments such as the proposed Final Judgment in this case. *See* 15 U.S.C. §§ 16(b)–(f). Those requirements do not include notice on the Department's public website of the last day of the 60-day period for public comments. The Department nevertheless appreciates Professor Calkins' suggestion and will consider implementing it in connection with future proposed final judgments.

VI. CONCLUSION

After careful consideration of the public comments, the Department continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The Department will move this Court to enter the proposed Final Judgment after the comments and this response are published pursuant to 15 U.S.C. § 16(d).

Dated: January 13, 2017

Respectfully submitted,

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[FR Doc. 2017–03029 Filed 2–14–17; 8:45 am]

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[85] Professor Calkins comment at 1–2.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1734]

Meeting of the Office of Justice Programs' Science Advisory Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of OJP's Science Advisory Board (''the Board''). This meeting is scheduled for March 27–28, 2017. General Function of the Board: The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice.

DATES: The meeting will take place on Monday, March 27 2017, from approximately 12 noon p.m. to 5:30 p.m., and on Tuesday, March 28 2017 from approximately 9 a.m. to 12 noon.

ADDRESSES: The meeting will take place in the Main Conference Room on the third floor of the Office of Justice Programs, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Katherine Darke Schmitt, Designated Federal Officer (DFO), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; Phone: (202) 616–7373 [Note: This is not a toll-free number]; Email: *katherine.darke@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being convened to brief the OJP Acting Assistant Attorney General and the Board members on the progress of the subcommittees, discuss any recommendations they may have for consideration by the full Board, and brief the Board on various OJP-related projects and activities. The final agenda is subject to adjustment, but the meeting will likely include briefings of the subcommittees' activities and discussion of future Board actions and priorities. This meeting is open to the public. Members of the public who wish to attend this meeting must register with Katherine Darke Schmitt at the above address at least seven (7) calendar days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Ms. Darke Schmitt at least seven (7) calendar days in advance of the meeting.

Katherine Darke Schmitt,

Senior Policy Advisor and SAB DFO, Office of the Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2017–02986 Filed 2–14–17; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Funding Opportunity Announcement (FOA).

Announcement Type: New.

Funding Opportunity Number: FOA 17–3BS.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.603.

SUMMARY: The U.S. Department of Labor (DOL), Mine Safety and Health Administration (MSHA), is making up to $1,000,000 available in grant funds for education and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for Fiscal Year (FY) 2017 will be on training and training materials to better identify, avoid and prevent unsafe working conditions in and around mines. Applicants for the grants may be States (to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Mariana Islands) and private or public nonprofit entities, to include Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations. MSHA could award as many as 20 grants. The amount of each individual grant will be at least $50,000.00 and the maximum individual award will be $250,000. MSHA may incrementally fund these grants based on milestones and availability of funds. This notice contains all of the information needed to apply for grant funding.

DATES: The closing date for applications will be March 24, 2017, (no later than 11:59 p.m. EST). MSHA will award grants on or before April 10, 2017.

ADDRESSES: Grant applications for this competition must be submitted

electronically through the *Grants.gov* site at *www.grants.gov.* If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to help applicants submit online.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this FOA 17–3BS should be directed to Janice Oates at *oates.janice@dol.gov* or 202–693–9573 (this is not a toll-free number) or Krystle Mitchell at *Mitchell.Krystle@dol.gov* or 202–693–9570 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This solicitation provides background information and the requirements for projects funded under the solicitation. This solicitation consists of eight parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate the applications.
- Part VI provides award administration information.
- Part VII contains MSHA contact information.
- Part VIII addresses Office of Management and Budget (OMB) information collection requirements.

I. Program Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Under Section 14 of the MINER Act, the Secretary of Labor (Secretary) is required to establish a competitive grant program called the ''Brookwood-Sago Mine Safety Grants'' (Brookwood-Sago grants). 30 U.S.C. 965. This program provides funding for education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary emphasize programs and materials that target miners in smaller mines, including training mine operators and miners on new MSHA standards, high-risk activities, and other identified safety priorities.

B. Education and Training Program Priorities

MSHA priorities for the FY 2017 funding of the annual Brookwood-Sago grants will focus on training or training materials to better identify, avoid and prevent unsafe working conditions in and around mines. MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety training or educational programs, recruit mine operators and miners for the training, and conduct and evaluate the training. MSHA will give special emphasis to programs and materials that target workers at smaller mines, including training miners and employers about new MSHA standards, high risk activities, or hazards identified by MSHA.

MSHA expects Brookwood-Sago grantees to conduct follow-up evaluations with the people who received training in their programs to measure how the training promotes the Secretary's goal to ''improve workplace safety and health'' and MSHA's goal to ''prevent death, disease and injury from mining and promote safe and healthful workplaces for the Nation's miners.'' Evaluations will focus on determining how effective their training was in either reducing hazards, improving skills for the selected training topics, or in improving the conditions in mines. Grantees must also cooperate fully with MSHA evaluators of their programs which may include data collection or provision of training curricula, materials or mechanisms.

II. Federal Award Information

A. Award Amount for FY 2017

MSHA is providing up to $1,000,000 for the 2017 Brookwood-Sago grant program which could be awarded in a maximum of 20 separate grants of no less than $50,000 each. Applicants requesting less than $50,000 or more than $250,000 for a 12-month performance period will not be considered for funding.

B. Period of Performance

The performance period for these grants is April 10, 2017 through April 9, 2018. MSHA may fund these grants incrementally, subject to the availability of funds. During any continuing resolution, MSHA may award a grantee pro-rated funding. The current continuing resolution would cover the period between April 10 and April 28, 2017. If MSHA awards a grant during continuing resolutions, the amount of funds MSHA may award is based on the milestones that the grantee has provided in its application. The first milestone would cover activities from April 10 through April 28, 2017. MSHA may award additional amounts of funds to grantees through separate documents subject to availability of funds under additional continuing resolutions, a full-year continuing resolution, or a final appropriation.

MSHA may approve a request for a one time no-cost extension to grantees for an additional period from the expiration date of a milestone or other period of performance based on the success of the project and other relevant factors. See 2 CFR 200.308(d)(2).

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States (to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Mariana Islands) and private or public nonprofit entities, to include Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States (including the District of Columbia and U.S. territories), State-supported or local government-supported institutions of higher education, and tribal governments and tribal-supported institutions of higher education, will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS). A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. See 2 U.S.C. 1611.

B. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR part 2, subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the

selection of contractors and subcontractors.

C. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility.

IV. Application and Submission Information

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. The full application is available through the *Grants.gov* Web site, *www.grants.gov.* Click the ''Applicants'' tab, then click ''Apply for Grants''. The Catalog of Federal Domestic Assistance (CFDA) number needed to locate the appropriate application for this opportunity is 17.603. If an applicant has problems downloading the application package from *Grants.gov*, contact the *Grants.gov* Contact Center at 1–800–518–4726 or by email at *support@grants.gov.*

The full application package is also available online at *www.msha.gov:* Select ''Training and Education,'' click on ''Training Programs and Courses,'' then select ''Brookwood-Sago Mine Safety Grants''. This Web site also includes all forms and all regulations that are referenced in this FOA. Applicants, however, must apply for this funding opportunity through the *Grants.gov* Web site. You may request paper copies of the package by contacting the Directorate of Educational Policy and Development at 202–693–9570.

B. Content and Form of the FY 2017 Application

Each grant application must address identification, avoidance and prevention of unsafe working conditions in and around mines (*e.g.,* highwall hazard recognition and prevention, haul road hazard recognition and prevention, mine emergency prevention and preparedness). The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Forms and Financial Plan (No page limit).
- Section 2—Executive Summary (Not to exceed two pages).
- Section 3—Technical Proposal (Not to exceed 12 pages). Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Forms and Financial Plan

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the grant application and forms. Applications submitted electronically through *Grants.gov* do not need to be signed manually; electronic signatures will be accepted.

(a) Completed SF–424, ''Application for Federal Assistance,'' (OMB No. 4040–0004, expiration: 10/31/2019). This form is part of the application package on *Grants.gov* and is also available at *www.msha.gov:* (Select ''Training and Education,'' click on ''Training Programs and Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'') The SF–424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the representative of the applicant.

Completed SF–424A, ''Budget Information for Non-Construction Programs,'' (OMB No. 4040–0006, expiration: 01/31/2019). The project budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with the Federal cost principles and the administrative requirements set forth in this FOA. (Copies of all regulations that are referenced in this FOA are available online at *www.msha.gov.* (Select ''Training and Education,'' click on ''Training Programs and Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'')

(b) *Budget Narrative.* The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds to each of the activities specified in the technical proposal and it should discuss precisely how any administrative costs support the project goals.

If applicable, the applicant must provide a statement about its program income. See 2 CFR 200.80 and 200.307 and this FOA, Part IV.F.1(a) and (b).

The amount of Federal funding requested for the entire period of performance must be shown on the SF–424 and SF–424A forms.

(d) Completed SF–424B, ''Assurances for Non-Construction Programs,'' (OMB No. 4040–0007, expiration: 01/31/2019). Each applicant for these grants must certify compliance with a list of assurances. This form is part of the application package on *www.grants.gov* and also is available at *www.msha.gov:* (Select ''Training and Education,'' click on ''Training Programs and Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'')

(e) Supplemental Certification Regarding Lobbying Activities Form. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit SF–LLL, ''Disclosure Form to Report Lobbying,'' (OMB No. 4040–0013, expiration: 01/31/2019) in accordance with its instructions. This form is part of the application package on *www.grants.gov* and is also available at *www.msha.gov:* (Select ''Training and Education,'' click on ''Training Programs and Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'')

(f) Non-profit status. Applicants must provide evidence of non-profit status, preferably from the IRS, if applicable.

(g) Accounting System Certification. Under the authority of 2 CFR 200.207, MSHA requires that a new applicant that receives less than $1 million annually in Federal grants attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

(1) Accurate, current, and complete disclosure of the financial results of each federally sponsored project.

(2) Records that adequately identify the source and application of funds for federally sponsored activities.

(3) Effective control over and accountability for all funds, property, and other assets.

(4) Comparison of outlays with budget amounts.

(5) Written procedures to minimize the time elapsing between transfers of funds.

(6) Written procedures for determining the reasonableness, allocability, and allowability of costs.

(7) Accounting records, including cost accounting records that are supported by source documentation.

(h) Attachments. The application may include attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Executive Summary

The executive summary is a short one-to-two page abstract that succinctly summarizes the proposed project.

MSHA will publish, as submitted, all grantees' executive summaries on the DOL Web site. The executive summary must include the following information:

(a) Applicant. Provide the organization's full legal name and address.

(b) Funding requested. List how much Federal funding is being requested.

(c) Grant Topic. List the grant topic and the location and number of mine operators and miners that the organization has selected to train or describe the training materials or equipment to be created with these funds.

(d) Program Structure. Identify the type of grant as ''annual.''

(e) Summary of the Proposed Project. Write a brief summary of the proposed project. This summary must identify the key points of the proposal, including an introduction describing the project activities and each milestone with the expected results.

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials to meet the objectives of this solicitation. MSHA's focus for these grants is on training mine operators and miners and developing training materials to better identify, avoid and prevent unsafe working conditions in and around mines. MSHA shall give special emphasis to programs and materials that target workers at smaller mines, including training miners and employers about new MSHA standards, high risk activities, or hazards identified by MSHA. A Department of Labor Strategic Goal is to ''improve workplace safety and health''. MSHA has a performance goal to ''prevent death, disease, and injury from mining and promote safe and healthful workplaces for the Nation's miners.'' MSHA's award of the Brookwood-Sago grants supports these goals and strategies. To show how the grant projects promote these goals and strategies, grantees must report, at each milestone, the following information (as applicable):

Number of trainers trained
Number of mine operators and miners trained
Number of training events
Number of course days of training provided to industry
Course evaluations of trainer and training material
Description of training materials created, to include target audience, goals and objectives, and usability in the mine training environment

The technical proposal narrative must not exceed 12 single-sided, double-spaced pages, using 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, and Output and Evaluation. Any pages over the 12-page limit will not be reviewed. Attachments to the technical proposal are not counted toward the 12-page limit. Major sections and sub-sections of the proposal should be divided and clearly identified. As required in Part VIII subpart B ''Transparency,'' a grantee's final technical proposal will be posted ''as is'' on MSHA's Web site unless MSHA receives a version redacting any proprietary, confidential business, or personally identifiable information no later than two weeks after receipt of the Notice of Award.

MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design

(1) Statement of the Problem/Need for Funds. Applicants must identify a clear and specific need for proposed activities. They must identify whether they are providing a training program, creating training materials, or both. Applicants also must identify the number of individuals expected to benefit from their training and education program; this should include identifying the type of mines, the geographic locations of the training, and the number of mine operators and miners.

(i) Quality of the Project Design

MSHA requires that each applicant include a 12-month workplan that will begin no later than April 10, 2017, and end no later than April 9, 2018.

(ii) Plan Overview

Describe the plan for grant activities and the anticipated results. The plan should describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to mine operators and miners receiving the training.

(iii) Milestones

Because MSHA may be funding these grants incrementally, applicants must identify milestones for the project, which may be adjusted as funding becomes available. For example, the first milestone that correlates with the first grant performance period is from April 10, 2017 through June 10, 2017. For the remaining milestones, we suggest intervals of three months. If MSHA funds these grants incrementally, applicants should identify activities that either can be completed during the applicable milestone or anticipate that other funding may be needed to complete the activities. If funding permits, MSHA expects to award all the funding for the year and will provide a separate document identifying the period of performance with the amount of funding awarded.

(iv) Activities

Break the plan down into activities or tasks for each milestone. For each activity, explain what will be done, who will do it, when it will be done, and the anticipated results of the activity. For training, discuss the subjects to be taught, the length of the training sessions, type of training (*e.g.,* highwall hazard recognition and prevention, haul road hazard recognition and prevention, mine emergency prevention and preparedness), and training locations (*e.g.,* classroom, worksites). Describe how the applicant will recruit mine operators and miners for the training. (Note: Any commercially developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used).

(v) Milestone Projections

For training and other quantifiable activities, estimate the quantities involved for data required to meet the grant goals located in Part IV.B.3. For example, estimate how many classes will be conducted and how many mine operators and miners will be trained each milestone. Also, provide the training number totals for the full year. Projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant by those who received the train-the-trainer training. These second-tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant.

(vi) Materials

Describe each educational material to be produced under this grant. Provide a timetable, including milestones, for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products or evaluation of equipment. MSHA must review and approve training materials or equipment for technical accuracy and suitability of content before use in the grant program. Whether or not an applicant's project is

to develop training materials only, the applicant should provide an overall plan that includes time for MSHA to review any materials produced.

(b) Qualifications of the Applicant

(1) Applicant's Background

Describe the applicant, including its mission, and a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit). Identify the following:

(i) Project Director

The Project Director is the person who will be responsible for the day-to-day operation and administration of the program. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Project Director.

(ii) Certifying Representative

The Certifying Representative is the official in the organization who is authorized to enter into grant agreements. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Certifying Representative.

(2) Administrative and Program Capability

Briefly describe the organization's functions and activities, *i.e.,* the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include each organization for which the work was done and the dollar value of each grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed. Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experiences with other organizations.

(3) Program Experience

Describe the organization's experience conducting the proposed mine training program or other relevant experience. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety, may partner with an established mine safety organization to acquire safety expertise.

(4) Staff Experience

Describe the qualifications of the professional staff you will assign to the program. Attach resumes of staff already employed (resumes will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety experience, training experience, or experience working with the mining community.

(c) Outputs and Evaluations

There are two types of evaluations that must be conducted. First, describe the methods, approaches, or plans to evaluate the training sessions or training materials to meet the data requirements in Part IV.B.3. Second, describe plans to assess the long-term effectiveness of the training materials or training conducted. The type of training given will determine whether the evaluation should include a process-related outcome or a result-related outcome or both. This will involve following up with an evaluation, or on-site review, if feasible, of miners trained. The evaluation should focus on what changes the trained miners made to abate hazards and improve workplace conditions, or to incorporate this training in the workplace, or both.

For training materials, include an evaluation from individuals trained on the clarity of the presentation, organization, and the quality of the information provided on the subject matter and whether they would continue to use the training materials. Include timetables for follow-up and for submitting a summary of the assessment results to MSHA.

C. Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM)—Required

Under 2 CFR 25.200(b)(3), every applicant for a Federal grant is required to include a DUNS number with its application. The DUNS number is a nine-digit identification number that uniquely identifies business entities. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://fedgov.dnb.com/webform.*

After receiving a DUNS number, all grant applicants must register as a vendor with the System for Award Management (SAM) through the Web site *www.sam.gov.* Grant applicants must create a user account and register online. Submitted registrations will take up to 10 business days to process, after which the applicant will receive an email notice that the registration is active. Once the registration is active in SAM it takes an additional 24–48 hours for the registration to be active in *Grants.gov.* SAM registrations must be renewed annually. SAM will send notifications to the registered user via email prior to expiration of the registration. Under 2 CFR 25.200(b)(2), each grant applicant must maintain an active registration with current information at all times during which it has an active Federal award or an application under active consideration.

D. Submission Date, Times, and Addresses

The closing date for applications will be March 24, 2017, (no later than 11:59 p.m. EST). MSHA will award grants on or before April 10, 2017.

Grant applications must be submitted electronically through the *Grants.gov* Web site. The *Grants.gov* site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA No. 17.603.

1. Non-Compliant Applications

(a) Applications that are lacking any of the required elements or do not follow the format prescribed in IV.B. will not be reviewed.

(b) Late Applications

You are cautioned that applications should be submitted before the deadline to ensure that the risk of late receipt of the application is minimized. Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

Applications received by *Grants.gov* are date and time stamped electronically. Once an interested party has submitted an application, *Grants.gov* will notify the interested

party with three emails: (1) An automatic notification of receipt that provides the applicant with a tracking number, (2) a notification that informs applicants that the application has been validated by *Grants.gov* and is being prepared for Agency retrieval, and (3) a notification that the DOL E-Grants system has received the application from *Grants.gov* (the application is ready for Agency review).

An application must be fully uploaded and validated by the *Grants.gov* system before the application deadline date.

E. Intergovernmental Review

The Brookwood-Sago grants are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' MSHA; however, reminds applicants that if they are not operating MSHA-approved State training grants, they should contact the State grantees and coordinate any training or educational program. Information about each state grant and the entity operating the state grant is provided online at: *www.msha.gov/TRAINING/STATES/STATES.asp.*

F. Funding Restrictions

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training and outreach, developing educational materials, recruiting activities (to increase the number of participants in the program), and on necessary expenses to support these activities. Allowable costs are determined by the applicable Federal cost principles identified in Part VI.B, which are attachments in the application package, or are located online at *www.msha.gov:* (Select ''Training and Education'', click on ''Training Programs and Courses'', then select ''Brookwood-Sago Mine Safety Grants.'') Paper copies of the material may be obtained by contacting the Directorate of Educational Policy and Development at 202–693–9570.

(a) If an applicant anticipates earning program income during the grant, the application must include an estimate of the income that will be earned. Program income earned must be reported on a quarterly basis.

(b) Program income is gross income earned by the grantee which is directly generated by a supported activity, or earned as a result of the award. Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds. See 2 CFR 200.80 and 200.307.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

(a) Any activity inconsistent with the goals and objectives of this FOA
(b) Training on topics that are not targeted under this FOA
(c) Purchasing any equipment unless pre-approved and in writing by the MSHA grant officer
(d) Direct administrative costs that exceed 15% of the total grant budget or in the event that the grant is incrementally funded, any direct administrative costs that exceed 20% of the total grant budget
(e) Indirect costs that exceed 10% of the modified total direct costs (as defined in 2 CFR 200.68) or the grantee's federally negotiated indirect cost rate reimbursement
(f) Any pre-award costs

Unallowable costs also include any cost determined by MSHA as not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information for FY 2017 Grants

A. Evaluation Criteria

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications using the following criteria:

1. Program Design—40 Points Total

(a) Statement of the Problem/Need for Funds (3 Points)

The proposed training and education program or training materials must address identification, avoidance and prevention of unsafe working conditions in and around mines (*e.g.,* highwall hazard recognition and prevention, haul road hazard recognition and prevention, mine emergency prevention and preparedness).

(b) Quality of the Project Design (25 Points)

(1) The proposal to train mine operators and miners clearly estimates the number to be trained and clearly identifies the types of mine operators and miners to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- Name or type of support the grantee will provide to new trainers.
- The number of individuals to be trained as trainers.
- The estimated number of courses to be conducted by the new trainers.
- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if conducted during the grant.

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the mine operators and miners to be trained. Any special constituency to be served through the grant program is described, *e.g.,* smaller mines, limited English proficiency miners, etc. Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.
- If the proposal includes developing training materials, the work plan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially developed training products will be used for a training program, applicants should also plan for MSHA to review the materials before using the products in their grant programs.
- The utility of the educational materials is described.
- The outreach or process to find mine operators, miners, or trainees to receive the training is described.

(c) Replication (4 Points)

The potential for a project to serve a variety of mine operators, miners, or mine sites, or the extent others may replicate the project.

(d) Innovation (3 Points)

The originality and uniqueness of the approach used.

(e) MSHA's Performance Goals (5 Points)

The extent the proposed project will contribute to MSHA's performance goals.

2. Budget—20 Points Total

(a) The budget presentation is clear and detailed. (15 points)

The budgeted costs are reasonable.

- No more than 20% of the total budget is for direct administrative costs in the event of incremental funding. Otherwise, no more than 15% of the

total budget is for direct administrative costs.

- Indirect costs do not exceed 10% of the modified total direct costs (as defined in 2 CFR 200.68) or the grantee's federally negotiated indirect cost rate reimbursement.
- The budget complies with Federal cost principles (which can be found in the applicable Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and with MSHA budget requirements contained in the grant application instructions).

(b) The application demonstrates that the applicant has strong financial management and internal control systems. (5 points)

3. Overall Qualifications of the Applicant—25 Points Total

(a) Grant Experience (6 Points)

The applicant has administered, or will work with an organization that has administered, a number of different Federal or State grants. The applicant may demonstrate this experience by having project staff that has experience administering Federal or State grants.

(b) Mine Safety Training Experience (13 Points)

- The applicant applying for the grant demonstrates experience with mine safety teaching or providing mine safety educational programs. Applicants that do not have prior experience in providing mine safety training to mine operators or miners may partner with an established mine safety organization to acquire mine safety expertise.
- Project staff has experience in mine safety, the specific topic chosen, or in training mine operators and miners.
- Project staff has experience in recruiting, training, and working with the population the organization proposes to serve.
- Applicant has experience in designing and developing mine safety training materials for a mining program.
- Applicant has experience in managing educational programs.

(c) Management (6 Points)

Applicant demonstrates internal control and management oversight of the project.

4. Outputs and Evaluations—15 Points Total

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety training and services provided resulted in workplace change or improved workplace conditions. The proposal should include a plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing miner illnesses and injuries.

B. Review and Selection Process for FY 2017 Grants

A technical panel will rate each complete application against the criteria described in this FOA. One or more applicants may be selected as grantees on the basis of the initial application submission or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Deputy Assistant Secretary for Operations for Mine Safety and Health will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost, and other factors. The Deputy Assistant Secretary's determination for award under this FOA is final.

C. Anticipated Announcement and Award Dates

Announcement of the awards is expected to occur before April 10, 2017. The grant agreement will be signed no later than April 10, 2017.

VI. Award Administration Information

A. Award Process

Before April 10, 2017, organizations selected as potential grant recipients will be notified by a representative of the Deputy Assistant Secretary. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute approval of the grant application as submitted (revisions may be required).

Before the actual grant award and the announcement of the award, MSHA may enter into negotiations with the potential grant recipient concerning such matters as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Deputy Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations law). These requirements are attachments in the application package or are located online at *www.msha.gov:* (Select ''Training and Education'', click on ''Training Programs and Courses'', then select ''Brookwood-Sago Mine Safety Grants.'') The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- *2 CFR part 25,* Universal Identifier and System for Award Management.
- *2 CFR part 170,* Reporting Subawards and Executive Compensation Information.
- *2 CFR part 175,* Award Term for Trafficking in Persons.
- *2 CFR part 180,* OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) (Nov. 15, 2006).
- *2 CFR part 200,* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Dec. 19, 2014).
- *2 CFR part 2900,* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- *2 CFR part 2998,* Nonprocurement Debarment and Suspension.
- *29 CFR part 2,* subpart D, Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- *29 CFR part 31,* Nondiscrimination in federally assisted programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.
- *29 CFR part 32,* Nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance.
- *29 CFR part 33,* Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Department of Labor.
- *29 CFR part 35,* Nondiscrimination on the basis of age in programs or activities receiving federal financial assistance from the Department of Labor.
- *29 CFR part 36,* Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance.

• *29 CFR part 93,* New restrictions on lobbying.

• *29 CFR part 94,* Government-wide requirements for drug-free workplace (financial assistance).

• *Federal Acquisition Regulation (FAR) Part 31, Subpart 31.2,* Contract cost principles and procedures (Codified at 48 CFR Subpart 31.2).

Unless specifically approved, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any program does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringement.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant. Completed materials should be submitted to MSHA in hard copy and in digital format for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As stated in 2 CFR 200.315 and 2 CFR 2900.13, the Department of Labor has a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced, or for which ownership was acquired, under a grant, and to authorize others to do so. Such products include, but are not limited to, curricula, training models, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the following disclaimer: ''This material was produced under grant number XXXXX from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

(a) The percentage of the total costs of the program or project that will be financed with Federal money;

(b) The dollar amount of Federal financial assistance for the project or program; and

(c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of U.S. Department of Labor (USDOL) or MSHA Logo

With written permission from MSHA, the USDOL and MSHA logos may be applied to the grant-funded materials including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. The grantees must consult with MSHA on whether the logos may be used on any such items prior to final draft or final preparation for distribution. In no event shall the DOL or MSHA logo be placed on any item until MSHA has given the grantee written permission to use the logos on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below. Grantees are also required to submit final reports no later than 90 days after the end of the grant. MSHA will advise recipients regarding the applicable reporting periods and requirements in the event of incremental funding of these grants. Subject to availability of funding, MSHA intends to adjust and be consistent with quarterly reporting requirements.

(a) Financial Reports

The grantee shall submit financial reports at the end of the first milestone, or on a quarterly basis. Recipients are required to use the U.S. Department of Labor's Grantee Reporting Systems' electronic SF–425 (Federal Financial Report), (OMB No. 4040–0014, expiration: 1/31/2019), at *www.etareports.doleta.gov,* to report the status of all funds awarded and, if applicable, program income received and expended, during the funding period. All reports are due no later than 30 days after the end of the reporting period.

(b) Technical Project Reports

A grantee must submit a technical project report to MSHA no later than 30 days after each milestone. If so advised, the quarterly reporting dates may be July 10, 2017, October10, 2017, January 10, 2018, and April 10, 2018, respectively. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding period. This should include the current grant progress against the overall grant goals as provided in Part IV.B.3.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments or problems affecting the organization's ability to accomplish the work. See 2 CFR 200.328(d).

(c) Final Reports

At the end of the grant, each grantee must provide a project summary of its technical project reports, an evaluation report, and a close-out financial report. These final reports are due no later than 90 days after the end of the grant.

VII. Agency Contacts

Any questions regarding this FOA (FOA17–4BS) should be directed to Janice Oates at *Oates.Janice@dol.gov* or 202–693–9573 (this is not a toll-free number) or Krystle Mitchell at *@dol.gov* or 202–693–9570 (this is not a toll-free number). MSHA's Web page at *www.msha.gov* is a valuable source of background for this initiative.

VIII. Other Information

A. Freedom of Information

Any information submitted in response to this FOA will be subject to the provisions of the Freedom of Information Act, as appropriate.

B. Transparency in the Grant Process

DOL is committed to conducting a transparent grant award process and publicizing information about program outcomes. Posting awardees' grant applications on public Web sites is a means of promoting and sharing

innovative ideas. Additionally, we will publish a version of the Technical Proposal required by this solicitation, for all those applications that are awarded grants, on the Department's Web site or a similar location. The Technical Proposals and Executive Summaries will not be published until after the grants are awarded. In addition, information about grant progress and results may also be made publicly available.

DOL recognizes that grant applications sometimes contain information that an applicant may consider proprietary or business confidential information, or may contain personally identifiable information. Information is considered proprietary or confidential commercial/business information when it is not usually disclosed outside your organization and when its disclosure is likely to cause you substantial competitive harm.

Personally identifiable information is information that can be used alone or in conjunction with other information to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.[1]

Executive Summaries will be published in the form originally submitted, without any redactions. However, in order to ensure that confidential information is properly protected from disclosure when DOL posts the winning Technical Proposals, applicants whose technical proposals will be posted will be asked to submit a second redacted version of their Technical Proposal, with proprietary, confidential commercial/business, and personally identifiable information redacted. All non-public information about the applicant's staff should be removed as well. The Department will contact the applicants whose technical proposals will be published by letter or email, and provide further directions about how and when to submit the redacted version of the Technical Proposal. Submission of a redacted version of the Technical Proposal will constitute permission by the applicant for DOL to post that redacted version. If an applicant fails to provide a redacted version of the Technical Proposal, DOL will publish the original Technical Proposal in full, after redacting personally identifiable information. (Note that the original, unredacted version of the Technical Proposal will remain part of the complete application package, including an applicant's proprietary and confidential information and any personally identifiable information.)

Applicants are encouraged to maximize the grant application information that will be publicly disclosed, and to exercise restraint and redact only information that truly is proprietary, confidential commercial/business information, or capable of identifying a person. The redaction of entire pages or sections of the Technical Proposal is not appropriate, and will not be allowed, unless the entire portion merits such protection. Should a dispute arise about whether redactions are appropriate, DOL will follow the procedures outlined in the Department's Freedom of Information Act (FOIA) regulations (29 CFR part 70).

Redacted information in grant applications will be protected by DOL from public disclosure in accordance with federal law, including the Trade Secrets Act (18 U.S.C. 1905), FOIA, and the Privacy Act (5 U.S.C. 552a). If DOL receives a FOIA request for your application, the procedures in DOL's FOIA regulations for responding to requests for commercial/business information submitted to the government will be followed, as well as all FOIA exemptions and procedures. 29 CFR 70.26. Consequently, it is possible that application of FOIA rules may result in release of information in response to a FOIA request that an applicant redacted in its ''redacted copy.''

C. Office of Management and Budget Information Collection Requirements

This FOA requests information from applicants and grantees. This collection of information is approved under OMB No. 1225–0086, expiration: 05/31/2019.

Except as otherwise noted, in accordance with the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit five progress reports to MSHA. MSHA estimates that each report will take approximately two and one-half hours to prepare.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for MSHA, Office of Management and Budget Room 10235, Washington, DC 20503, the U.S. Department of Labor, OASAM–OCIO, Information Resources Program, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210, and MSHA, electronically to Janice Oates at *Oates.Janice@dol.gov* or by mail to Janice Oates, 5th floor, 201 12th Street South, Arlington, VA 22202.

This information is being collected for the purpose of awarding a grant. Submission of this information is requested for the applicant to be considered for award of this grant.

Authority: 30 U.S.C. 965.

Patricia W. Silvey,

Deputy Assistant Secretary for Operations for Mine Safety and Health.

[FR Doc. 2017–03025 Filed 2–14–17; 8:45 am]

BILLING CODE 4510–43–P

[1] OMB Memorandum 07–16 and 06–19. GAO Report 08–536, *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information,* May 2008, *www.gao.gov/assets/280/275558.pdf.*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–006)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Wednesday, March 22, 2017, 9:30 a.m.–4:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6E40, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Executive Secretary for the NAC Aeronautics Committee, NASA Headquarters, Washington, DC 20546, (202) 358–0984, or *irma.c.rodriguez@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up

to the capacity of the room. Any person interested in participating in the meeting by WebEx and telephone should contact Ms. Irma Rodriguez at (202) 358–0984 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Integrated Strategy for Unmanned Aircraft System (UAS)
- On-Demand Mobility (ODM) Research Strategy
- Advanced Composites Project

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, any attendees with driver's licenses issued from non-compliant states must present a second form of ID. Non-compliant states are: Maine, Minnesota, Missouri, Montana, and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting by contacting Ms. Irma Rodriguez, via email at *irma.c.rodriguez@nasa.gov* or by telephone at (202) 358–0984. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–02966 Filed 2–14–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–007)]

NASA Advisory Council; Institutional Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the National Aeronautics and Space Administration announces a meeting of the Institutional Committee of the NASA Advisory Council (NAC). This committee reports to the NAC.

DATES: Monday, March 13, 2017, 9:00 a.m.–5:00 p.m.; and Tuesday, March 14, 2017, 9:00 a.m.–5:00 p.m.; Local Time.

ADDRESSES: NASA Headquarters, Glennan Conference Room, Room 1Q39, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Mullins, NAC Institutional Committee Executive Secretary, NASA Headquarters, Washington, DC 20546; (202) 358–3831; or *todd.mullins@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free access number (844) 467–6272 or toll access number (720) 259–6462, and then the numeric participant passcode: 180093 followed by the # sign. To join via WebEx on March 13, the Web link is *https://nasa.webex.com/,* the meeting number is 998 696 205 and the password is Meeting2017! (Password is case sensitive.) To join via WebEx on March 14, the link is *https://nasa.webex.com/,* the meeting number is 997 178 886 and the password is Meeting2017!

Note: If dialing in, please ''mute'' your telephone. The agenda for the meeting includes the following topics:

- Business Systems Assessment (BSA) Status
- BSA Facilities Implementation Plan
- BSA Budget Management Deep Dive
- Review of BSA IT Implementation Plan Execution and FITARA Compliance

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Due to the Real ID Act, any attendees with driver's licenses issued from non-compliant states must present a second form of ID. Non-compliant states/territories are: Maine, Minnesota, Missouri, Montana, and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting by contacting Ms. Mary Dunn, via email at *mdunn@nasa.gov* or by telephone at (202) 358–2789. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–02967 Filed 2–14–17; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (''IMLS'') as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the continuance of the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. A copy of the proposed information collection request can be

obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 14, 2017.

ADDRESSES: For a copy of the documents contact: Matthew Birnbaum, Ph.D., Supervisory Social Science Researcher, Planning, Research and Evaluation, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Dr. Birnbaum can be reached by Telephone: 202–653–4760, Fax: 202–653–4601, or by email at *mbirnbaum@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Mrs. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, or by email at *sburwell@imls.gov* or by teletype (TTY/TDD) at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library, and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

II. Current Actions

This proposed request is to renew IMLS' generic clearance for collection of qualitative feedback on the Agency's service delivery. This data collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient and timely manner in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, IMLS means information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0081, which expires July 31, 2017.

Agency: Institute of Museum and Library Services.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3137–0081.

Agency Number: 3137.

Affected Public: State and local governments, State library agencies, and public libraries.

Number of Respondents: 4,900.

Frequency of Response: Once per request.

Average Minutes per Response: 55 minutes.

Total Burden Hours: 1,418.

Cost Burden (Dollars): $39,520.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

Dated: February 9, 2017.

Kim A. Miller,

Grants Management Specialist, Office of the Chief Financial Officer.

[FR Doc. 2017–02989 Filed 2–14–17; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by April 17, 2017 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title of Collection: NSF Surveys to Measure Customer Service Satisfaction.

OMB Number: 3145–0157.

Expiration Date of Approval: July 31, 2017.

Type of Request: Intent to seek approval to renew an information collection.

Abstract:

Proposed Project: On September 11, 1993, President Clinton issued Executive Order 12862, ''Setting Customer Service Standards,'' which calls for Federal agencies to provide service that matches or exceeds the best service available in the private sector. Section 1(b) of that order requires agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' The National Science Foundation (NSF) has an ongoing need to collect information from its customer community (primarily individuals and organizations engaged in science and engineering research and education) about the quality and kind of services it provides and use that information to help improve agency operations and services.

Estimate of Burden: The burden on the public will change according to the needs of each individual customer satisfaction survey; however, each survey is estimated to take approximately 30 minutes per response.

Respondents: Will vary among individuals or households; business or other for-profit; not-for-profit institutions; farms; federal government; state, local or tribal governments.

Estimated Number of Responses per Survey: This will vary by survey.

Dated: February 10, 2017.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2017–03045 Filed 2–14–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0006]

Operator Licensing Examination Standards for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1021, Revision 11, ''Operator Licensing Examination Standards for Power Reactors.''

DATES: Revision 11 of NUREG–1021 will be applicable to operator licensing examinations that are administered 6 months after the date of this notice. After this date, facility licensees that elect to prepare, proctor, and grade written examinations and/or prepare operating tests must do so based on the guidance in Revision 11 of NUREG–1021, unless the NRC has reviewed and approved the facility licensee's alternative examination procedures. This guidance may be used for examinations administered at an earlier date if a licensee requests, and the NRC grants, an exemption to allow use of this NUREG at an earlier date.

ADDRESSES: Please refer to Docket ID NRC–2016–0006 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0006. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. NUREG–1021, Revision 11, is available in ADAMS under Accession No. ML17038A432. The NUREG is also accessible on the NRC's public Web site in the Documents Collection section of the NRC Library: (*https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1021/r11/*).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Timothy Kolb, Office of Nuclear Reactor Regulation, telephone: 301–415–0783; email: *Timothy.Kolb@nrc.gov;* or Maurin Scheetz, Office of New Reactors, telephone: 301–415–2758; email: *Maurin.Scheetz@nrc.gov.* Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

NUREG–1021, Revision 11 provides policy and guidance for the development, administration, and grading of examinations used for licensing operators at nuclear power plants. This NUREG also provides guidance for maintaining operators' licenses, and for the NRC to conduct requalification examinations when necessary.

This NUREG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Revision 11 of NUREG–1021 replaces Revision 10 of NUREG 1021. Draft NUREG–1021, Revision 11 was published in the **Federal Register** for public comment on February 5, 2016 (81 FR 6301) with a 45 day comment period. The NRC extended the comment period on Draft NUREG–1021, Revision 11 on March 3, 2016 (81 FR 11302) until April 5, 2016. The NRC received 314 public comments from private citizens and industry organizations. The NRC staff's evaluation and resolution of the public comments are documented in ADAMS under Accession No. ML17038A055.

Dated at Rockville, Maryland, this 8 day of February, 2017.

For the Nuclear Regulatory Commission.

Nancy Salgado,

Chief, Operator Licensing and Training Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–03035 Filed 2–14–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2017–4]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 21, 2017.

ADDRESSES: Submit comments electronically via the Commission's

Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* R2017–4; *Filing Title:* Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement; *Filing Acceptance Date:* February 9, 2017; *Filing Authority:* 39 CFR 3010.40 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* February 21, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–03051 Filed 2–14–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017–121; CP2017–122; CP2017–123]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 16, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

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The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–121; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* February 8, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* February 16, 2017.

2. *Docket No(s).:* CP2017–122; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* February 8, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 16, 2017.

3. *Docket No(s).:* CP2017–123; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package

Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* February 8, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 16, 2017.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Secretary.

[FR Doc. 2017–02978 Filed 2–14–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79995; File Nos. SR–ISEGemini–2016–16; SR–ISEMercury–2016–22]

Self-Regulatory Organizations; ISE Gemini, LLC; ISE Mercury, LLC; Order Granting Approval of Proposed Rule Changes, as Modified by Amendment Nos. 1 and 2 Thereto, To Permit Nasdaq Execution Services, LLC To Become an Affiliated Member of Each Exchange To Perform Certain Routing and Other Functions

February 9, 2017.

I. Introduction

On December 9, 2016, ISE Gemini, LLC (''ISE Gemini'') and ISE Mercury, LLC (''ISE Mercury,'' and each of ISE Gemini and ISE Mercury an ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes related to the routing of orders, cancellation of orders, and handling of error positions. The proposed rule changes would also permit Nasdaq Execution Services, LLC (''NES'') to become an affiliated Member [3] of each Exchange to perform certain routing and other functions. On December 20, 2016, each Exchange filed Amendment No. 1 to its respective proposed rule change, which amended and replaced each original filing in its entirety. Also on December 20, 2016, each Exchange filed Amendment No. 2 to its respective proposed rule change.[4] The proposed rule changes, each as modified by Amendment Nos. 1 and 2, were published for comment in the **Federal Register** on December 29, 2016.[5] The Commission received no comments on the proposed rule changes. This order grants approval of the proposed rule changes, each as modified by the respective Amendment Nos. 1 and 2.

II. Background

On June 21, 2016, the Commission approved a proposed rule change relating to a corporate transaction in which Nasdaq, Inc. would become the ultimate parent of International Securities Exchange, LLC (''ISE''), ISE Gemini, and ISE Mercury (collectively, the ''ISE Exchanges'').[6] The transaction closed on June 30, 2016.[7] Nasdaq, Inc. is the ultimate parent of NASDAQ BX, Inc. (''BX''), The NASDAQ Stock Market LLC (''Nasdaq''), and NASDAQ PHLX LLC (''Phlx'' and, together with Nasdaq and BX, the ''Nasdaq Exchanges'').[8] Nasdaq, Inc. is also the ultimate parent of NES,[9] a broker-dealer that is a member, and affiliate, of each of the Nasdaq Exchanges.[10] As a result of this transaction, the ISE Exchanges and the Nasdaq Exchanges became affiliates,[11] and NES became an affiliate of the ISE Exchanges.[12]

As described in more detail below, ISE Gemini and ISE Mercury have now proposed rule changes (1) to permit each respective Exchange to receive inbound orders in options routed through NES from the Affiliated Exchanges, pursuant to certain limitations and conditions; and (2) to permit NES to become a Member of each Exchange to perform certain routing and other functions.

ISE Gemini and ISE Mercury's respective rulebooks incorporate by reference Chapter 19 of ISE's rulebook, which contains rules relating to the routing of orders, cancellation of orders, and handling of certain error positions.[13] ISE submitted a related proposed rule change to: (1) Route outbound orders in options listed and open for trading on ISE's system to away markets through NES, either directly or through a third-party routing broker-dealer; (2) adopt rules regarding the cancellation of orders and the handling of certain error positions, including maintenance by NES of an error account; and (3) make related conforming changes.[14] These ISE rules, which the Commission is also approving today, concerning the outbound routing of orders, cancellation of orders, and handling of error accounts, will be incorporated by reference into ISE Gemini and ISE Mercury's rules,[15] and are similar to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Member'' is an organization that has been approved to exercise certain trading rights on the Exchange. *See* ISE Gemini Rule 100(a)(23); ISE Mercury Rule 100(a)(23).

[4] Each Amendment No. 2 amended the description of one of the inbound routing conditions that would apply. Specifically, each Exchange modified the third condition to specify that the report that FINRA will provide to the Exchange's chief regulatory officer on a quarterly basis will quantify all alerts, of which the Exchange or FINRA (rather than solely FINRA) are aware, that identify NES as a participant that has potentially violated Commission or Exchange rules.

[5] *See* Securities Exchange Act Release Nos. 79664 (December 22, 2016), 81 FR 96136 (''ISE Gemini Notice''); 79663 (December 22, 2016), 81 FR 96089 (''ISE Mercury Notice'').

[6] *See* Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11; SR–ISE Gemini–2016–05; SR–ISE Mercury–2016–10) (order approving Nasdaq, Inc.'s acquisition of ISE, ISE Gemini, and ISE Mercury) (''Nasdaq Acquisition Order'').

[7] *See http://ir.nasdaq.com/releasedetail.cfm?releaseid=977785* (Nasdaq press release announcing completion of its acquisition).

[8] *See* Nasdaq Acquisition Order, *supra* note 6, at 41611.

[9] *See* Securities Exchange Act Release No. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028) (order approving a proposed rule change to make permanent a pilot program to permit Nasdaq to accept inbound orders routed by NES from the BX Equities market and PSX) at 19352 n.6 and accompanying text (''BX Equity Routing Approval''). *See also* ISE Gemini Notice, *supra* note 5, at 96137; ISE Mercury Notice, *supra* note 5, at 96089.

[10] *See* Securities Exchange Act Release Nos. 79661 (December 22, 2016), 81 FR 96100 (December 29, 2016) (SR–BX–2016–068) at 96100; 79662 (December 22, 2016), 81 FR 96087 (December 29, 2016) (SR–NASDAQ–2016–169) at 96087; and 79660 (December 22, 2016), 81 FR 96060 (December 29, 2016) (SR–Phlx–2016–120) at 96061. *See also* ISE Gemini Notice, *supra* note 5, at 96137; ISE Mercury Notice, *supra* note 5, at 96089.

[11] *See* Nasdaq Acquisition Order, *supra* note 6, at 41611 n.8. The Nasdaq Exchanges, together with ISE, ISE Gemini (with respect to ISE Mercury), and ISE Mercury (with respect to ISE Gemini), are referred to herein as the ''Affiliated Exchanges.''

[12] *See generally* ISE Gemini Notice, *supra* note 5, at 96137 (discussing that NES is a broker-dealer owned and operated by Nasdaq, Inc. and affiliated with ISE Gemini and the Affiliated Exchanges); ISE Mercury Notice, *supra* note 5, at 96089 (discussing that NES is a broker-dealer owned and operated by Nasdaq, Inc. and affiliated with ISE Mercury and the Affiliated Exchanges).

[13] *See* ISE Gemini Rules, Chapter 19 (incorporating by reference rules in ISE Rules, Chapter 19); ISE Mercury Rules, Chapter 19 (incorporating by reference rules in ISE Rules, Chapter 19).

[14] *See* Securities Exchange Act Release No. 79665 (December 22, 2016), 81 FR 96092 (December 29, 2016) (''ISE Notice'') (notice of filing that proposes, among other things, to amend ISE Rules 1903, 1904, and 1905, and make conforming changes to ISE Rule 1901). The Commission is also today approving this proposed rule change. *See* Securities Exchange Act Release No. 79994 (February 9, 2017) (''ISE Exchange Routing Order'').

[15] Consistent with the proposals by ISE Gemini and ISE Mercury described herein, the ISE rules that the Commission is approving today also (1) permit ISE to receive inbound orders in options routed through NES from the Affiliated Exchanges, pursuant to certain limitations and conditions; and (2) permit NES to become a Member of ISE to perform certain routing and other functions. *See* ISE Notice, *supra* note 14, at 96093–94; ISE Exchange Routing Order, *supra* note 14.

rules of Phlx,[16] as well as the other Nasdaq Exchanges.[17] Finally, ISE Gemini and ISE Mercury requested that the Commission approve their proposals to permit NES to become a Member of each respective Exchange, as required by ISE Gemini Rule 309 and ISE Mercury Rule 309 because of NES's affiliation with the Exchanges,[18] to perform certain functions relating to routing orders inbound from the Affiliated Exchanges, the outbound routing of orders to away markets, cancellation of orders, and the maintenance of an error account.

III. Discussion and Commission Findings

After careful review, the Commission finds, as discussed in more detail below, that the proposed rule changes, as modified by Amendment Nos. 1 and 2, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule changes, as modified by Amendment Nos. 1 and 2, are consistent with Section 6(b)(1) of the Act,[20] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purpose of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule changes, as modified by Amendment Nos. 1 and 2, are consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

A. Restriction on Affiliation

As noted above, ISE Gemini and ISE Mercury proposed that NES be permitted to become a Member of each respective Exchange to perform certain routing and other functions, as described in more detail below.[22] Absent Commission approval, ISE Gemini Rule 309 and ISE Mercury Rule 309 would prohibit NES from becoming a Member of either Exchange because of its affiliation with each Exchange and its affiliation with affiliates of each Exchange. Specifically, pursuant to ISE Gemini Rule 309, without prior Commission approval, a Member of the Exchange ''shall not be or become an affiliate of the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated.'' [23] ISE Mercury Rule 309 contains the same restriction.[24]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[25] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, the Commission believes that it is consistent with the Act, as discussed in more detail below, to permit NES, an affiliate of each Exchange, to be a Member of each Exchange to perform each of the proposed functions, subject to the proposed limitations and conditions. The Commission also believes that the proposed limitations and conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage,[26] and that each Exchange's proposed rules are designed to ensure that NES cannot use any information advantage it may have because of its affiliation with each Exchange.[27]

B. Inbound Routing

As discussed above, NES is currently a member of each Nasdaq Exchange. NES also operates as a facility of each of Nasdaq, Phlx, and BX that provides outbound options routing from each to other market centers, subject to certain conditions.[28] The Commission is approving today ISE's proposal that NES operate as a facility of ISE that provides outbound options routing to other market centers, subject to similar conditions.[29] The operation of NES as a facility of each of the Affiliated Exchanges providing outbound routing

[16] *See* ISE Gemini Notice, *supra* note 5, at 96138; ISE Mercury Notice, *supra* note 5, at 96090–91. *See also* Phlx Rules 985(c)(2), 1080(m)(ii), (iii), and (v).

[17] *See* Nasdaq Rule 2160(c) and Nasdaq Options Rules, Chapter VI, Section 11(d)–(g); and BX Rule 2140(c) and BX Options Rules, Chapter VI, Section 11(d)–(g).

[18] *See* ISE Gemini Notice, *supra* note 5, at 96137; ISE Mercury Notice, *supra* note 5, at 96090.

[19] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(1).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* ISE Gemini Notice, *supra* note 5, at 96137; ISE Mercury Notice, *supra* note 5, at 96090. *See also infra* Sections III.B–C.

[23] *See* ISE Gemini Rule 309. *See also* ISE Gemini Notice, *supra* note 5, at 96137.

[24] *See* ISE Mercury Rule 309. *See also* ISE Mercury Notice, *supra* note 5, at 96090.

[25] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[26] *See infra* note 39 and accompanying text.

[27] *See infra* note 40 and accompanying text. The Commission also notes that the functions to be performed by NES for ISE Gemini and ISE Mercury, as well as the related limitations and conditions, are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving rules relating to the establishment of the BX options market, including the use of an affiliated member for outbound and inbound routing of options orders) at 39280–82; and 67280 (June 27, 2012), 77 FR 39552 (July 3, 2012) (SR–BX–2012–034) (order approving a proposed rule change with respect to the authority of the BX or NES to cancel orders when a technical or systems issue occurs and the operation of an error account); BX Equity Routing Approval, *supra* note 9. In addition, the Commission is approving today ISE's proposal to allow NES to become a member of ISE to perform equivalent functions, subject to the same limitations and conditions. *See* ISE Exchange Routing Order, *supra* note 14.

[28] *See* Phlx Rule 1080(m)(ii) and (iii); Nasdaq Options Rules, Chapter VI, Section 11(d)–(f); BX Options Rules, Chapter VI, Section 11(d)–(f). The Commission notes that these conditions are consistent with the conditions the Commission is approving today for ISE Gemini and ISE Mercury's operation of NES as a facility of each Exchange for outbound options routing to other market centers. *See infra* Section III.C.

[29] *See* ISE Exchange Routing Order, *supra* note 14.

services will be subject to oversight by ISE, Nasdaq, BX, and Phlx, respectively, as well as Commission oversight. Each of the Affiliated Exchanges will be responsible for ensuring that NES's outbound options routing services are operated consistent with Section 6 of the Act and with the respective Affiliated Exchange's rules. In addition, the Affiliated Exchanges must each file with the Commission rule changes and fees relating to their outbound options routing services provided by NES.

Recognizing that the Commission previously expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interest, ISE Gemini and ISE Mercury proposed the following limitations and conditions to permit each Exchange to accept inbound options orders that NES routes in its capacity as a facility of the Affiliated Exchanges: [30]

- First, each Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Services Agreement (''RSA''), as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[31] Pursuant to the RSA and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[32] Pursuant to the RSA, however, each Exchange retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA will monitor NES for compliance with each of the Exchange's trading rules, and will collect and maintain certain related information.[33]
- Third, FINRA will provide a report to each Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission, or the respective Exchange's, rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission, or the respective Exchange's, rules.
- Fourth, ISE Gemini and ISE Mercury proposed to amend ISE Gemini Rule 309 and ISE Mercury Rule 309, respectively, to add ISE Gemini Rule 309(b) and ISE Mercury Rule 309(b), which will provide that Nasdaq, Inc., as the holding company owning both the Exchange and NES, shall establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange Members, in connection with the provision of inbound routing to the Exchange.[34]

The Commission finds that ISE Gemini and ISE Mercury's proposed rule changes to permit each Exchange to accept inbound options orders routed by NES from its Affiliated Exchanges, including the related change to ISE Gemini Rule 309 and ISE Mercury Rule 309, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,[35] and Section 6(b)(5) of the Act.[36]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[37] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of each of the Affiliated Exchanges, to route options orders inbound to ISE Gemini and ISE Mercury, subject to the limitations and conditions described above.[38]

The Commission believes that these limitations and conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of NES,[39] combined with a non-affiliated SRO's monitoring of NES's compliance with each of the respective Exchange's rules and quarterly reporting to the respective Exchange, will help to protect the independence of ISE Gemini and ISE Mercury's regulatory responsibilities with respect to NES. The Commission also believes that proposed ISE Gemini Rule 309(b) and proposed ISE Mercury Rule 309(b) are designed to ensure that NES cannot use any information advantage it may have because of its affiliation with ISE Gemini or ISE Mercury.[40]

C. Outbound Routing, Cancellation of Orders, and Error Accounts

As discussed above, the Commission is today approving a proposed rule change by ISE that will amend certain provisions in Chapter 19 of ISE's rulebook, which is incorporated by reference to, and will therefore also become, the rules of ISE Gemini and ISE Mercury.[41] Specifically, these new rules incorporated by reference will (1) permit ISE Gemini and ISE Mercury to route outbound orders in options listed and open for trading on their respective systems to away markets through NES, either directly or through a third-party routing broker-dealer; and (2) govern cancellation of orders by the Exchange or NES as either deems necessary to maintain a fair and orderly market if a technical or systems issue occurs at the Exchange, NES, or a routing destination, and the maintenance of an error account by NES for the purpose of addressing error positions that result from a

[30] *See* ISE Gemini Notice, *supra* note 5, at 96137–38; ISE Mercury Notice, *supra* note 5, at 96090.

[31] 17 CFR 240.17d–2.

[32] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[33] Pursuant to the RSA, both FINRA and the respective Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of each of the Affiliated Exchanges routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The respective Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* ISE Gemini Notice, *supra* note 5, at 96137 n.14 and accompanying text; ISE Mercury Notice, *supra* note 5, at 96090 n.14 and accompanying text.

[34] *See* proposed ISE Gemini Rule 309(b); proposed ISE Mercury Rule 309(b). ISE Gemini and ISE Mercury each proposed to designate existing ISE Gemini Rule 309 and ISE Mercury Rule 309, respectively, as subparagraph (a). *See* proposed ISE Gemini Rule 309(a); proposed ISE Mercury Rule 309(a).

[35] 15 U.S.C. 78f(b)(1). *See also supra* note 20 and accompanying text.

[36] 15 U.S.C. 78f(b)(5). *See also supra* note 21 and accompanying text.

[37] *See supra* note 25 and accompanying text.

[38] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256, *supra* note 27, at 39281–82; and 69299 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15) (order approving a proposed rule change to make permanent a pilot program to permit PSX to accept inbound orders routed by NES from BX); and BX Equity Routing Approval, *supra* note 9.

[39] This oversight will be accomplished through the 17d–2 Agreement between FINRA and each Exchange and the RSA.

[40] *See supra* note 34 and accompanying text.

[41] *See supra* notes 13–15 and accompanying text.

technical or systems issue at the Exchange, NES, a routing destination, or an unaffiliated third-party routing broker-dealer that affects one or more orders.[42] The Commission found these rules, which will also become rules of ISE Gemini and ISE Mercury, to be consistent with the Act.[43]

ISE Gemini and ISE Mercury each proposed that NES be permitted to perform the same functions pursuant to the same conditions with respect to the outbound routing of orders, cancellation of orders, and the handling of error positions as set forth in the ISE proposal.[44] As discussed in the ISE Exchange Routing Order, the Commission believes that the proposed rules and procedures regarding the Exchanges' use of NES to route orders to away markets, cancellation of orders, and handling of error positions, which will also apply to ISE Gemini and ISE Mercury's use of NES, are consistent with the Act, for the reasons, and pursuant to the protections and considerations, discussed in such order.[45]

In addition, the Exchanges propose to make a related, conforming rule change to ISE Gemini Rule 705 and ISE Mercury Rule 705, respectively, which do not incorporate by reference ISE's rules. Currently, pursuant to ISE rules incorporated by reference, ISE Gemini and ISE Mercury utilize Linkage Handlers [46] unaffiliated with the Exchange to route outbound orders.[47] Pursuant to the proposed rule change by ISE, as applied to the Exchanges, ISE Gemini and ISE Mercury will no longer utilize unaffiliated Linkage Handlers to route outbound orders and instead, NES will route orders to other options exchanges, either directly, or indirectly through unaffiliated third-party routing broker-dealers, on behalf of ISE Gemini and ISE Mercury.[48] Accordingly, ISE Gemini and ISE Mercury have proposed to remove ISE Gemini Rule 705(d)(4) and ISE Mercury Rule 705(d)(4), respectively, which provide an exception to the limits on compensation in ISE Gemini Rule 705(d) and ISE Mercury Rule 705(d) for Members to the extent such Members are acting as Linkage Handlers.[49] ISE Gemini and ISE Mercury explained that Phlx does not have a similar provision and ISE is also removing this provision from its comparable rule.[50] The Commission believes that this minor, conforming revision is consistent with the Act.

IV. Implementation of Proposed Rule Change

ISE Gemini and ISE Mercury stated that they intend to begin implementation of the proposed rule changes in the first quarter of 2017 and third quarter of 2017, respectively, and that the migration will be on a symbol-by-symbol basis.[51] The Commission expects that the Exchanges will issue alerts to Members to announce the relevant migration date for specific symbols. ISE Gemini and ISE Mercury represented that they will add notations in each rulebook to cross-reference the amended rule text and clarify the respective implementation dates.[52]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[53] that the proposed rule changes (SR–ISEGemini–2016–16; SR–ISEMercury–2016–22), each as modified by their respective Amendment Nos. 1 and 2, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02992 Filed 2–14–17; 8:45 am]

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[42] *See supra* note 14 and accompanying text.

[43] *See* ISE Exchange Routing Order, *supra* note 14.

[44] *See* ISE Gemini Notice, *supra* note 5, at 96138; ISE Mercury Notice, *supra* note 5, at 96091.

[45] *See* ISE Exchange Routing Order, *supra* note 14, at Section III.B and III.D. The proposal by ISE being approved today also makes other conforming changes to rules incorporated by reference. *See* ISE Exchange Routing Order, *supra* note 14.

[46] A ''Linkage Handler'' is a broker that is unaffiliated with the Exchange with which the Exchange has contracted to provide Routing Services, as that term is defined in ISE Rule 1903, by routing ISO(s) to other exchange(s) as an agent on behalf of Public Customer and Non-Customer Orders according to the requirements of Rule 1901 (prohibition on trade-throughs) and Rule 1902 (prohibition on locked and crossed markets). *See* ISE Rule 1901, Supplementary Material .03. ISE Gemini Rules 100(a)(28) and (39), and ISE Mercury Rules 100(a)(28) and (39), define ''Non-Customer Order'' and ''Public Customer Order,'' respectively.

[47] *See* ISE Rule 1903(a).

[48] *See* ISE Exchange Routing Order, *supra* note 14.

[49] *See* proposed ISE Gemini Rule 705(d); proposed ISE Mercury Rule 705(d).

[50] *See* ISE Gemini Notice, *supra* note 5, at 96138; ISE Mercury Notice, *supra* note 5, at 96091. *See also* ISE Notice, *supra* note 14, at 96095 (noting that, unlike NES, Linkage Handlers are not affiliated with ISE and ISE does not believe that such an exception to compensation limits is necessary for NES).

[51] *See* ISE Gemini Notice, *supra* note 5, at 96138; ISE Mercury Notice, *supra* note 5, at 96091.

[52] *See* ISE Gemini Notice, *supra* note 5, at 96138; ISE Mercury Notice, *supra* note 5, at 96091.

[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79993; File No. SR–NYSEMKT–2017–01]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Adopt New Equities Trading Rules To Transition Trading on the Exchange From a Floor Based Market With a Parity Allocation Model to Fully Automated Price-Time Priority Model on the Exchange's New Trading Technology Platform, Pillar

February 9, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 25, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes new rules to transition trading on the Exchange to Pillar, the Exchange's new trading technology platform, and to operate as a fully-automated cash equities market. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 29, 2015, the Exchange announced the implementation of Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca'') and New York Stock Exchange LLC (''NYSE'').[4] NYSE Arca Equities, Inc. (''NYSE Arca Equities),[5] which operates the cash equities trading platform for NYSE Arca, was the first trading system to migrate to Pillar.[6]

Overview

With Pillar, the Exchange proposes to transition its cash equities trading platform from a Floor-based market with a parity allocation model to a fully automated price-time priority allocation model. As such, when the Exchange transitions to Pillar, the Exchange would no longer have a Floor-based point-of-sale trading model. As a consequence, the Exchange is proposing to replace its Floor-based Designated Market Makers (''DMM'') with electronic DMMs, and would no longer have Floor brokers or support Supplemental Liquidity Providers as a separate class of participant on the Exchange.[7]

The Exchange also proposes to expand the securities it trades to all NMS securities, including securities listed on NYSE, NYSE Arca, the Nasdaq Stock Market LLC (''Nasdaq''), and the Bats BZX Exchange, Inc. (''Bats''). Trading of securities on an unlisted trading privileges basis would be subject to the same trading rules as trading of securities listed on the Exchange, except for specified rules directed to the Exchange's responsibility as a primary listing market, *e.g.,* proposed Rules 7.11E and 7.16E, described in further detail below.

The Exchange will be filing several proposed rule changes to support the NYSE MKT cash equities implementation of Pillar. The Exchange has already adopted the rule numbering framework of the NYSE Arca Equities rules for Exchange cash equities trading on the Pillar trading platform.[8] As described in the Framework Filing, the Exchange is denoting the rules applicable to cash equities trading on Pillar with the letter ''E'' to distinguish such rules from current Exchange rules with the same numbering.[9] In addition, the Exchange has filed a proposed rule change to support Exchange trading of securities listed on NYSE, NYSE Arca, and other exchanges on an unlisted trading privileges basis, including Exchange Traded Products (''ETP'') listed on other exchanges.[10]

In this filing, the Exchange proposes trading rules that would govern Exchange cash equities trading on Pillar. All trading would be automated, including opening, re-opening, and closing auctions. As proposed, the Exchange's Pillar cash equities trading platform would be based on the rules and trading model of NYSE Arca Equities, which is a fully-automated price-time priority allocation model with registered market makers.

As discussed in the Framework Filing, Rules 1E–13E govern cash equities trading on the Pillar platform.[11] In particular, Rule 7E Equities Trading would establish the trading rules. Rule 7E Equities Trading would be based on NYSE Arca Equities Rule 7 Equities Trading.

In addition, to support the proposed fully-automated market, the Exchange is proposing rules based on NYSE Arca Equities Rules 1 Definitions, 2 Equity Trading Permits, 3 Organization and Administration, 6 Business Conduct, Rule 12 Arbitration, and Rule 13 Liability of Directors and Exchange.

The Exchange proposes the following differences to how it will function on Pillar as compared to NYSE Arca Equities:

- To be addressed in a separate filing, for securities listed on NYSE MKT, the Exchange would maintain DMMs. These electronic-access DMMs would be subject to rules-based heightened quoting obligations vis-à-vis their assigned securities. For all securities that would trade on the Exchange, including UTP securities, the Exchange would have electronic registered market makers with obligations similar to the obligations of market makers on NYSE Arca Equities.
- The Exchange would not offer a Retail Liquidity Program and related order types (Retail Orders and Retail Price Improvement Orders).
- The Exchange would offer three trading sessions, but the Early Trading Session would begin at 7:00 a.m. Eastern Time instead of 4:00 a.m. Eastern Time.
- ETP Holders would communicate with the Pillar trading platform using Pillar phase II protocols only.

Subject to rule approvals, the Exchange will announce the transition of its cash equities trading to the Pillar trading system by Trader Update, which the Exchange anticipates will be in the second quarter of 2017.

Because the Exchange would not be trading on both its current Floor-based trading platform and the Pillar trading platform at the same time, once trading on the Pillar trading platform begins, specified current Exchange equities trading rules would no longer be applicable. Accordingly, as described in more detail below, for each current equities rule that would no longer be applicable when trading on the Pillar

[4] *See* Trader Update dated January 29, 2015, available here: *www.nyse.com/pillar.*

[5] NYSE Arca Equities is a wholly-owned corporation of NYSE Arca and operates as a facility of NYSE Arca.

[6] In connection with the NYSE Arca implementation of Pillar, NYSE Arca filed four rule proposals relating to Pillar. *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR–NYSEArca–2015–38) (Approval Order of NYSE Arca Pillar I Filing, adopting rules for Trading Sessions, Order Ranking and Display, and Order Execution); Securities Exchange Act Release Nos. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (Approval Order of NYSE Arca Pillar II Filing, adopting rules for Orders and Modifiers and the Retail Liquidity Program); Securities Exchange Act Release Nos. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR–NYSEArca–2015–58) (Approval Order of NYSE Arca Pillar III Filing, adopting rules for Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots); and Securities Exchange Act Release Nos. 76085 (October 6, 2015), 80 FR 61513 (October 13, 2015) (Notice) and 76869 (January 11, 2016), 81 FR 2276 (January 15, 2016) (Approval Order of NYSE Arca Pillar IV Filing, adopting rules for Auctions).

[7] *See, e.g.,* Rule 107B—Equities.

[8] *See* Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR–NYSEMKT–2016–97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the ''Framework Filing'').

[9] To distinguish Rule 1E–13E from Exchange rules that govern options trading, the Exchange proposes a non-substantive change to amend the description of ''Pillar Platform Rules'' after Rule 0—Equities to specify that these are ''cash equities'' rules.

[10] *See* Securities Exchange Act Release No. 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR–NYSEMKT–2016–103) (Notice) (the ''ETP Listing Rules Filing''). When trading on Pillar, the Exchange would not be relying on Rule 500—Equities—Rule 525—Equities for authority to trade securities on an unlisted trading privileges basis. Accordingly, the Exchange proposes to amend Rule 500—Equities to provide that the Rules of that series (Rules 500—Equities—Rule 525—Equities) would not be applicable to trading on the Pillar trading platform. To use terms applicable to trading on Pillar, the Exchange also proposes to amend Rule 2A(b)(2)—Equities to replace the term ''Nasdaq Security'' with the term ''UTP Security'' and replace the rule reference from Rule 501—Equities to Rule 1.1E(ii).

[11] Rules 1E–13E are including in the ''Equities Rules'' portion of the Exchange's rule book. Pursuant to Rule 0—Equities, the Equities Rules govern all transactions conducted on the Equities Trading Systems.

trading platform begins, the Exchange proposes to state in a preamble to such rule that ''this rule is not applicable to trading on the Pillar trading platform.'' [12] Once the Exchange has transitioned to the Pillar trading platform, the Exchange will file a separate proposed rule change to delete those current rules that have been identified in this filing as not being applicable to trading on Pillar. Current Exchange rules governing equities trading that do not have this preamble will continue to govern Exchange operations on its cash equities trading platform.

Proposed Rule Changes

As noted above, the Exchange proposes rules that would be applicable to cash equities trading on Pillar that are based on NYSE Arca Equities Rules. As a global matter, the Exchange proposes non-substantive differences as compared to the NYSE Arca Equities rules to use the term ''Exchange'' instead of the terms ''NYSE Arca Marketplace,'' ''NYSE Arca,'' or ''Corporation,'' and to use the terms ''mean'' or ''have the meaning'' instead of the terms ''shall mean'' or ''shall have the meaning.'' [13]

Rule 1E

As described in the Framework Filing, Rule 1E specifies definitions that are applicable to trading on the Pillar trading platform. The Exchange proposes the following additional definitions:

• Proposed Rule 1.1E(a) would define the term ''Exchange Book'' as the Exchange's electronic file of orders. This proposed rule is based on NYSE Arca Equities Rule 1.1(a), which defines the term ''NYSE Arca Book,'' with a non-substantive difference to not include the following phrase in the Exchange's proposed rule: ''Which contains all orders entered on the NYSE Arca Marketplace.'' The Exchange believes that this clause is redundant of the description of the Exchange Book.

• Proposed Rule 1.1E(g) would define the term ''Authorized Trader'' or ''AT'' to mean a person who may submit orders to the Exchange's cash equities Trading Facilities on behalf of his or her ETP Holder. This proposed rule is based on NYSE Arca Equities Rule 1.1(g) with non-substantive differences to reflect that the Exchange will not have sponsored participants.

• Proposed Rule 1.1E(j) would define the term ''Core Trading Hours'' to mean the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time or such other hours as may be determined by the Exchange from time to time. This proposed rule is based on NYSE Arca Equities rule 1.1(j).

• Proposed Rule 1.1E(k) would define the term ''Exchange'' to mean NYSE MKT. Because the term ''Exchange'' would be defined in proposed Rule 1.1E(k), the Exchange proposes that Rule 1—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 1.1E(m) would define the term ''ETP'' to mean an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's cash equity Pillar trading platform pursuant to Rules 1E–13E. The proposed rule would further provide that an ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization that is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and which has been approved by the Exchange as a member organization. This proposed rule text is based on NYSE Arca Equities Rule 1.1(m) with non-substantive differences to specify that an ETP is the permit for effecting approved securities transaction on the Exchange's cash equity Pillar trading platform pursuant to Rules 1E–13E. As described in greater detail below, the Exchange proposes to use ETPs to permission its member organizations to trade on its Pillar cash equities trading platform.

• Proposed Rule 1.1E(n) would define the term ''ETP Holder'' to mean a member organization that has been issued an ETP. The proposed rule would further provide that an ETP Holder would agree to be bound by the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission. This proposed rule is based on NYSE Arca Equities Rule 1.1(n), with a proposed difference to reference the term ''member organization,'' which is defined in Rule 2(b)—Equities.

• Proposed Rule 1.1E(p) would define the term ''General Authorized Trader'' or ''GAT'' to mean an AT who performs only non-market making activities on behalf of an ETP Holder. This proposed rule is based on NYSE Arca Equities Rule 1.1(p) without any substantive differences.

• Proposed Rule 1.1E(u) would define the term ''Marketable'' to mean, for a Limit Order, an order than can be immediately executed or routed. The proposed rule would further provide that Market Orders are always considered Marketable. This proposed rule text is based on NYSE Arca Equities Rule 1.1(u).

• Proposed Rule 1.1E(gg) would define the term ''Official Closing Price'' as the reference price to determine the closing price in a security for purposes of Rule 7E Equities Trading. Proposed Rules 1.1E(gg)(1)–(5) would specify how the Exchange would determine an Official Closing Price in all circumstances, including when the Exchange is unable to conduct a Closing Auction in one or more Exchange-listed securities due to a systems or technical issue, and is based on NYSE Arca Equities Rule 1.1(gg) without any substantive differences. Proposed Rule 1.1E(gg), together with proposed Rule 7.35E described in greater detail below, would obviate current Rule 123C—Equities (The Closing Procedures).[14] Accordingly, the Exchange proposes to specify that Rule 123C—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 1.1E(rr) would define the term ''security'' and ''securities'' to mean any security as defined in in Rule 3(a)(10) under the Securities Exchange Act of 1934; provided, however, that for purposes of Rule 7E such terms mean any NMS stock. This proposed rule is based on NYSE Arca Equities Rule 1.1(ss) [sic] without any substantive differences. Because the term ''security'' would be defined in proposed Rule 1.1E(rr), the Exchange proposes to specify that Rules 3—Equities and 4—Equities, which define the terms ''Security'' and ''Stock'' would not be applicable to trading on the Pillar trading platform. In addition, because the Exchange would not be trading bonds on its Pillar cash equities trading platform, the Exchange proposes to specify that Rule 5—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 1.1E(ss) would define the term ''Self-Regulatory

[12] The Exchange proposes to amend the description of Cash Equities Pillar Platform Rules, which precedes Rule 1E, to delete the last sentence, which currently provides that ''[t]he following rules will not be applicable to trading on the Pillar trading platform: Rules 7—Equities, 55—Equities, 56—Equities, 62—Equities, and 80B—Equities.'' As proposed, the inapplicability of these rules on the Pillar platform would be addressed in the preamble that the Exchange proposes to add to each of these rules. The Exchange further proposes to retain Rule 56—Equities when the Exchange migrates to Pillar, as it addresses the unit of trading for rights, which are listed on the Exchange.

[13] Because these non-substantive differences would be applied throughout the proposed rules, the Exchange will not note these differences separately for each proposed rule.

[14] Rule 123C(1)(e)—Equities sets forth how the Exchange currently determines the Official Closing Price of a security listed on the Exchange.

Organization ('SRO')'' as having the same meaning as set forth in the provisions of the Securities Exchange Act of 1934 relating to national securities exchanges. This proposed rule text is based on NYSE Arca Equities Rule 1.1(ss) without any substantive differences.

• Proposed Rule 1.1E(xx) would define the term ''Trading Facilities'' or ''Facilities'' to mean any and all electronic or automated trading systems provided by the Exchange to ETP Holders. This proposed rule text is based on NYSE Arca Equities Rule 1.1(xx) without any substantive differences.

• The Exchange proposes to amend Rule 1.1E(hhh) to add the letter ''E'' to the reference to Rule 7 in this rule.

Rule 2E

The Exchange proposes to amend Rule 2E to delete the term ''Reserved'' and re-name this rule as ''Equity Trading Permits.'' The Exchange proposes rules to support Equity Trading Permits (''ETP'') on the Exchange for trading on the Pillar trading platform that are based on NYSE Arca Equities Rule 2.

Currently, Rule 300—Equities governs trading licenses on the Exchange. Under that rule, a trading license issued by the Exchange is required to effect transactions on the floor of the Exchange or through any facility thereof and an organization may acquire and hold a trading license only if and for so long as such organization is qualified and approved to be a member organization of the Exchange. The Exchange's current trading license rule is identical to NYSE Rule 300 and a single trading license provides an Exchange member organization with the ability to trade on both the Exchange and NYSE.

To trade on Pillar, the Exchange proposes that a member organization would need an ETP.[15] Accordingly, a trading license issued under Rule 300—Equities would not permit a member organization to trade on the Exchange's Pillar cash equities trading platform. Instead, as proposed, a member organization would be eligible to obtain an ETP to trade on the Exchange's cash equities Pillar trading platform. As noted above, member organizations that have been issued an ETP would be referred to in Exchange rules as ''ETP Holders.'' [16]

In addition, because the Exchange would operate as a fully-automated market, the Exchange proposes rules that mirror those of NYSE Arca Equities with respect to requirements relating to employees of ETP Holders. Accordingly, ETP Holders accessing the Exchange on its Pillar cash equities trading platform would have the same employee registration requirements as NYSE Arca Equities.

• Proposed Rule 2.2E (Qualification of Applicants) would provide that an ETP may be held by an entity that is approved as a member organization. This proposed rule is based in part on the first sentence of NYSE Arca Equities Rule 2.2, which provides that an ETP on NYSE Arca Equities may be held by an entity that is a registered broker or dealer pursuant to Section 15 of the Act, as amended, including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies. The Exchange would not include in its Rule 2.2E the text in NYSE Arca Equities Rule 2.2 relating to registered broker dealers because it is duplicative of Rule 2(b)(i), which defines the term member organization on the Exchange.

• Proposed Rule 2.4E (Denial or Conditions to ETPs) would govern the denial or conditions to ETPs and is based on NYSE Arca Equities Rule 2.4 without any substantive differences. Paragraphs (a) and (b) of proposed Rule 2.4E would specify the circumstances when the Exchange could deny or condition trading privileges on the Exchange, and these circumstances are identical to those specified in NYSE Arca Equities Rule 2.4(a) and (b).

The proposed rule would separately specify the Series 7 Examination requirement for traders of ETP Holders for which the Exchange is the Designated Examining Authority. These proposed requirements are identical to the Series 7 Examination requirements for ETP Holders on NYSE Arca Equities. The Exchange proposes a non-substantive difference to paragraphs (c) and (f) of proposed Rule 2.4E to cross-reference Rule 9522 instead of NYSE Arca Equities Rule 10.

• Proposed Rule 2.6E (Revocable Privilege) would specify that the issuance of an ETP would constitute only a revocable privilege and confers on its holder no right or interest of any nature to continue as an ETP Holder. This proposed rule is based on NYSE Arca Equities Rule 2.6 without any differences. The Exchange also proposes to add a sub-header to Exchange rules immediately preceding Rule 2.6E that would provide ''Requirements of Holding an ETP.'' This proposed text is based on the sub-header before NYSE Arca Equities Rule 2.6 that provides ''Requirements of Holding an ETP Requirements Applicable Generally.'' The Exchange proposes an abbreviated form of the sub-header to eliminate unnecessary text. Because proposed Rule 2.6E, together with proposed Rule 2.4E, would establish the requirements for a member organization to obtain an ETP, the Exchange proposes that Rule 300—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 2.17E (Activity Assessment Fees) would specify the Activity Assessment Fees applicable for securities transactions effected on the Exchange as required by Section 31 of the Act. This proposed rule is based on current Rule 440H—Equities without any substantive differences. Specifically, the rule text is based on Supplementary Material .10, .20, and the last sentence of .30 to Rule 440H—Equities with non-substantive differences to use Pillar terminology. Proposed Rule 2.17E is therefore designed to retain the existing requirements relating to Activity Assessment Fees, but use new rule numbering for trading on the Pillar trading platform that is consistent with the Framework Filing. The Exchange does not propose to move rule text based on the first three sentences of Supplementary Material .30 to Rule 440H—Equities because that rule text is obsolete as it relates to a temporary program that automatically sunsetted in 2009.

Because proposed Rule 2.17E would set forth Activity Assessment Fees, the Exchange proposes that Rule 440H—Equities would not apply to trading on the Pillar trading platform.

• Proposed Rule 2.21E (Employees of ETP Holders Registration) would specify the registration requirements for employees of ETP Holders. This proposed rule is based on NYSE Arca Equities Rule 2.21 without any substantive differences. Accordingly, this rule would specify employee registration requirements for trading on the Exchange, including examination requirements, continuing education requirements, and procedures to register employees.

Because proposed Rule 2.21E, together with proposed Rule 2.4E, would specify employee registration

[15] The Exchange will file a separate proposed rule change to specify fees for cash equities trading on NYSE MKT when it transitions to Pillar.

[16] At this time, the Exchange is not proposing rules, comparable to those in NYSE Arca Equities Rule 2, that specify the requirements to be approved as a member of the Exchange. Accordingly, the Exchange proposes that the rule numbers under Rule 2E that would support membership requirements would be designated as ''Reserved.'' Instead, the Exchange's current rules governing the definition of a member organization and the requirements to be approved as a member organization would continue to apply.

requirements applicable to trading on the Exchange on its cash equities Pillar trading platform, the Exchange proposes to specify that the following rules, which govern current trading employee registration requirements, would not be applicable to trading on the Pillar trading platform: Rule 345—Equities (Employees—Registration, Approval, Records) and Rule 345A—Equities (Continuing Education for Registered Persons). The Exchange also proposes that the requirement for a member organization that a member organization that conducts a DMM business has a Series 14A requirement, as set forth in Rule 342—Equities, would not be applicable to trading on the Pillar trading platform. However, the Exchange would retain the non-Floor-based Compliance Supervisor requirements of Rule 342—Equities. Accordingly, a member organization engaged in a public business in addition to a DMM business must have a qualified compliance supervisor that has passed the Series 14 Examination, but would no longer need the Series 14A Examination.

• Proposed Rule 2.22E would specify the Exchange Back-Up Systems and Mandatory Testing Requirements of the Exchange and is based on Rule 49(b)—Equities without any substantive changes. The Exchange proposes to move this rule text to Rule 2.22E so that it has the same rule number as the rules of NYSE Arca Equities. Because member organizations trading on the Exchange's cash equities Pillar trading platform would be designated as ''ETP Holders'' in Exchange rules, the Exchange proposes to use the term ''ETP Holder'' instead of ''member organization'' in proposed Rule 2.22E.

The Exchange proposes to designate the entirety of Rule 49—Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing) as not applicable to trading on the Pillar trading platform. Because the Exchange would trade in its secondary data center under the same rules as would be applicable to trading on its primary data center, the procedures specified in Rule 49(a)—Equities would no longer be applicable.

• Proposed Rule 2.24E (ETP Books and Records) would establish an ETP Holder's books and records requirements and is based on NYSE Arca Equities Rule 2.24 without any substantive differences. Because proposed Rule 2.24E would establish the same requirements as set forth in current Rule 440—Equities (Books and Records), the Exchange proposes that Rule 440—Equities would not be applicable to trading on the Pillar trading platform.

Rule 3E

The Exchange proposes to amend Rule 3E to delete the term ''Reserved'' and re-name it ''Organization and Administration.'' Proposed Part I of Rule 3E would be designated as ''Reserved.'' Proposed Part II of Rule 3E would be designated ''Regulation'' and proposed Part III of Rule 3E would be designated ''Dues, Fees, and Fines.'' Except as described below, the rules under Rule 3E would be designated as ''Reserved'' because the subject matter of the NYSE Arca Equities Rules with corresponding numbers are the subject of existing Exchange rules that would continue to apply.[17]

• Proposed Rule 3.6E (Surveillance Agreements) would specify that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes. This proposed rule is based on NYSE Arca Equities 3.6 with no substantive differences. Because this rule covers the same subject matter as Rule 27—Equities, the Exchange proposes that that Rule 27—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 3.11E (Fingerprint-Based Background Checks of Exchange Employees and Others) would establish the Exchange's requirements for fingerprint-based background checks of Exchange employees and others. The proposed rule is based on NYSE Arca Equities Rule 3.11 and Rule 28—Equities, which are identical rules. The Exchange proposes to move the rule text from Rule 28—Equities to Rule 3.11E so that it has the same rule number as the same subject matter in the rules of NYSE Arca Equities. The Exchange further proposes that Rule 28—Equities would not be applicable to trading on the Pillar trading platform.

Rule 6E

The Exchange proposes to amend Rule 6E to delete the term ''Reserved'' and re-name it ''Business Conduct.'' The Exchange proposes rules governing specified business conduct. Except as described below, the rules under Rule 6E would be designated as ''Reserved.''

• Proposed Rule 6.3E (Prevention of the Misuse of Material, Nonpublic Information) would establish the Exchange's requirement that every ETP Holder establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such ETP Holder or persons associated with such ETP Holder. This proposed rule is based on NYSE Arca Equities Rule 6.3 without any substantive differences. The Exchange proposes a non-substantive difference to refer to the Exchange's ''regulatory staff'' instead of ''Surveillance Department.''

• Proposed Rule 6.10E (ETP Holders Holding Options) would specify an ETP Holder's obligations with respect to trading on the Exchange when holding any options that are not issued by the Options Clearing Corporation. This proposed rule is based on NYSE Arca Equities Rule 6.10 without any substantive differences. Current Rule 96—Equities (Limitations on Members' Trading Because of Options) sets forth a requirement similar to proposed Rule 6.10E, but that rule is only applicable to a member's trading while on the Floor for his own account or for any account in which he, his member organization, or any member, principal executive, or approved person of such organization is directly or indirectly interest. As proposed, Rule 6.10E would set forth these requirements and they would be applicable to all ETP Holders. In addition, the Exchange proposes that Rule 96—Equities (Limitation on Members' Trading Because of Options) would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 6.12E (Joint Accounts) would describe requirements relating to joint accounts. The proposed rule is based on NYSE Arca Equities Rule 6.12 without any substantive differences. The Exchange proposes a non-substantive difference in that the proposed rule would not include the phrase ''Application of the System'' because such terms are not defined on the Exchange. The Exchange proposes that Rules 93—Equities (Trading for Joint Account) and 94—Equities (Designated Market Marker's or Odd-Lot

[17] NYSE Arca Equities Rule 3 Part I relates to board committees, which are described in the Exchange's Operating Agreement, which is available here: *https://www.theice.com/publicdocs/nyse/regulation/nyse-mkt/Tenth_Amended_and_Restated_Operating_Agreement_of_NYSE_MKT_LLC.pdf*. NYSE Arca Equities Rules 3.4 and 3.5 relate to the self-regulatory responsibilities of NYSE Arca for the administration and enforcement of rules governing the operation of NYSE Arca Equities, its wholly owned subsidiary, and the delegation of authority from NYSE Arca to NYSE Arca Equities. Because the Exchange is itself a self-regulatory organization, these rules are inapplicable. The subject matter of NYSE Arca Equities Rule 3 Part III is addressed in the Exchange's Disciplinary Rules and Rule 2B—Equities.

Dealers Interest in Joint Accounts) would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 6.15E (Prearranged Trades) would prohibit prearranged trades and is based on NYSE Arca Equities Rule 6.15(b) without any substantive differences. The Exchange proposes that Rule 78—Equities, which similarly prohibits prearranged trades, would not be applicable to trading on the Pillar trading platform. The Exchange would not be adding rule text based on NYSE Arca Equities Rule 6.15(a), relating to prohibitions on engaging in manipulative practices or operations, because Rule 6140—Equities already establishes these requirements.

Rule 7E Equities Trading

The Exchange proposes additional rules under Rule 7E Equities Trading.

As previously established in the Framework Filing, Section 1 of Rule 7E specifies the General Provisions relating to cash equities trading on the Pillar trading platform. The Exchange proposes the following additional rules:

• Proposed Rule 7.1E (Hours of Business) would specify that the Exchange would be open for the transaction of business on every business day. The proposed rule also sets forth when the CEO may take specified actions, such as halting or suspending trading in some or all securities on the Exchange. The proposed rule is based on NYSE Arca Equities Rule 7.1 and Rule 51—Equities. The Exchange proposes that Rule 51—Equities would not be applicable to trading on the Pillar trading platform. In addition, because the definition of the term ''business day'' in Rule 12—Equities would be redundant of proposed Rule 7.1E, the Exchange proposes that Rule 12—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.2E (Holidays) would establish the holidays when the Exchange would not be open for business. The proposed rule is based on NYSE Arca Equities Rule 7.2 and Supplementary Material .10 to Rule 51—Equities, including text that provides that when any holiday observed by the Exchange falls on a Sunday, the Exchange would not be open for business on the succeeding Monday, which is in Rule 51—Equities.

• Proposed Rule 7.3E (Commissions) would establish that ETP Holders may not charge fixed commissions and must indicate whether acting as a broker or as principal. The proposed rule is based on NYSE Arca Equities Rule 7.3 without any substantive differences. Because Rule 388—Equities (Prohibition Against Fixed Rates of Commission) also prohibits fixed commissions, the Exchange proposes that Rule 388—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.4E (Ex-Dividend or Ex-Right Dates) would establish the ex-dividend and ex-rights dates for stocks traded regular way. The proposed rule is based on NYSE Arca Equities Rule 7.4 without any substantive differences. The Exchange proposes that Rule 235—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.7E (Transmission of Bids or Offers) would establish that all bids and offers on the Exchange would be anonymous unless otherwise specified by the ETP Holder. The proposed rule is based on NYSE Arca Equities Rule 7.7 without any substantive differences.

• Proposed Rule 7.8E (Bid or Offer Deemed Regular Way) would establish that all bids and offers would be considered to be ''regular way.'' This proposed rule text is based on NYSE Arca Equities Rule 7.8E. As proposed, the Exchange would not accept orders that, if executed, would not settle regular way. Accordingly, the Exchange proposes that Rules 12—Equities, 14—Equities, 73—Equities, which each specify rules for orders that are not entered ''regular way,'' would not be applicable to trading on the Pillar trading platform. Currently, the Exchange accepts bids and offers that are not made regular way only from Floor brokers.

• Proposed Rule 7.9E (Execution Price Binding) would establish that, notwithstanding Exchange rules governing clearly erroneous executions, the price at which an order is executed is binding notwithstanding that an erroneous report is rendered. This proposed rule text is based on NYSE Arca Equities Rule 7.9 without any substantive differences. The Exchange proposes that Rules 71—Equities (Precedence of Highest Bid and Lowest Offer) and 411—Equities (Erroneous Reports) would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.10E (Clearly Erroneous Executions) would set forth the Exchange's rules governing clearly erroneous executions. The proposed rule is based on NYSE Arca Equities Rule 7.10 without any substantive differences. The Exchange proposes rule text based on NYSE Arca Equities rather than current Rule 128—Equities (Clearly Erroneous Executions) because the NYSE Arca Equities version of the rule uses the same terminology that the Exchange is proposing for the Pillar trading platform, *e.g.,* references to Early, Core, and Late Trading Sessions. Accordingly, the Exchange proposes that Rule 128—Equities (Clearly Erroneous Executions) would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.11E (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) would specify how the Exchange would comply with the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'').[18] Because ETP Holders would communicate with the Exchange's proposed Pillar trading platform using Pillar phase II protocols only, the proposed rule is based on NYSE Arca Equities Rule 7.11(a) rule text governing Pillar phase II protocols without any substantive differences.[19] In addition, the Exchange proposes that it would include rule text based on current NYSE Arca Equities Rule 7.11(b)(2) and (b)(5) only as the remaining provisions of NYSE Arca Equities Rule 7.11(b) are obsolete now that the LULD Plan has been fully implemented. The Exchange proposes that Rule 80C—Equities would not be applicable to trading on the Pillar trading platform.

• The Exchange proposes to amend paragraph (c)(i) of Rule 7.12E to change the rule cross reference from Rule 123D—Equities to Rule 7.35E(e). As described in greater detail below, the Exchange proposes Rule 7.35E to govern its auctions, including auctions following a trading halt. Accordingly, the procedures for reopening a security specified in Rule 123D—Equities would not be applicable on the Pillar trading platform.

• Proposed Rule 7.13E (Trading Suspensions) would establish authority for the Chair or the CEO of the Exchange to suspend trading in any and all securities that trade on the Exchange if such suspension would be in the public interest. This proposed rule is based on NYSE Arca Equities Rule 7.13 with non-substantive differences to use the term ''CEO'' instead of ''President'' and to omit a cross reference to a rule that is not applicable on the Exchange.

• Proposed Rule 7.14E (Clearance and Settlement) would establish the requirements regarding an ETP Holder's arrangements for clearing. Because all

[18] *See* Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016) (File No. 4–631) (Order approving 10th Amendment to the LULD Plan).

[19] *See* Securities Exchange Act Release No. 79688 (December 23, 2016), 81 FR 96534 (December 30, 2016) (SR–NYSEArca–2016–170) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

post-trade functions on the Exchange's Pillar trading platform would follow the NYSE Arca Equities procedures for post-trade processing, the Exchange proposes rules that are based on NYSE Arca Equities rules governing clearing. Accordingly, the proposed rule is based on NYSE Arca Equities Rule 7.14 without any substantive differences. The Exchange proposes that its current rules governing clearing, Rules 130—Equities and 132—Equities, would not be applicable to trading on the Pillar trading platform.[20]

• Proposed Rule 7.15E (Stock Option Transactions) would establish requirements for Market Makers relating to pool dealing and having an interest in an option that is not issued by the Options Clearing Corporation. The proposed rule is based on NYSE Arca Equities Rule 7.15 without any substantive differences. Because the proposed rule covers the same subject matter as Rule 105—Equities, the Exchange proposes that this rule would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.16E (Short Sales) would establish requirements relating to short sales. The proposed rule is based on NYSE Arca Equities Rule 7.16 without any substantive differences. Because the proposed rule covers the same subject matter as Rule 440B—Equities (Short Sales), the Exchange proposes that Rule 440B—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.17E (Firm Orders and Quotes) would establish requirements that all orders and quotes must be firm. This proposed rule is based on NYSE Arca Equities Rule 7.17 without any substantive differences. Because on the Pillar trading platform, the Exchange would only publish automated quotations consistent with proposed Rule 7.17E, the Exchange proposes that Rule 60—Equities (Dissemination of Quotations) would not be applicable to trading on the Pillar trading platform.[21]

As noted above, the Exchange will file a separate proposed rule change to establish rules relating to Market Makers, which will be in Section 2 of Rule 7E. The Exchange has proposed Rule 7.18E in the ETP Listing Rules Filing.[22]

Section 3 of Rule 7E sets forth Exchange trading rules for the Pillar trading platform. As noted above, the Exchange proposes certain substantive differences to how the Exchange would operate on the Pillar trading platform compared to how NYSE Arca Equities operates. These substantive differences would be reflected in the proposed rules governing Orders and Modifiers and Trading Sessions.

Proposed Rule 7.31E (Orders and Modifiers) would specify the orders and modifiers that would be available on the Exchange on the Pillar trading platform. The Exchange proposes to offer the same types of orders and modifiers that are available on NYSE Arca Equities, with specified substantive differences.

Proposed Rule 7.31E is based on NYSE Arca Equities Rule 7.31 with the following differences. With respect to Self-Trade Prevention (''STP'') Modifiers, because the Exchange would be operating on Pillar phase II protocols only, STPs would be based on the MPID of an ETP Holder and not on an ETP ID. Accordingly, proposed Rule 7.31E(i)(2) would not include references from NYSE Arca Equities Rule 7.31(i)(2) relating to ETPIDs. In addition, Arca Only Orders, which are described in NYSE Arca Equities Rule 7.31(e)(1), would be named ''MKT Only Orders'' on the Exchange, as described in proposed Rule 7.31E(e)(1). The Exchange does not propose any substantive differences to how MKT Only Orders would function as compared to Arca Only Orders on NYSE Arca Equities. Next, the Exchange proposes that for Primary Only Day/IOC Orders, an ETP Holder may specify that an order in NYSE Arca-listed securities may include an instruction to be routed to NYSE Arca as a routable order, as set forth in proposed Rule 7.31E(f)(1)(B). Finally, because when operating on the Pillar phase II protocols, the Exchange would not accept order types with conflicting order instructions, the Exchange proposes not to include in proposed Rule 7.31E text based on Commentary .02 to NYSE Arca Equities Rule 7.31.

Because proposed Rule 7.31E would govern orders and modifiers, the Exchange proposes that Rule 13—Equities (Orders and Modifiers) would not be applicable to trading on the Pillar trading platform. In addition, references to Trading Collars in Rule 1000(c)—Equities would not be applicable to trading on the Pillar Trading platform.[23]

Proposed Rule 7.34E would specify trading session on the Exchange. Similar to NYSE Arca Equities, the Exchange proposes that on the Pillar trading platform, it would have Early, Core, and Late Trading Sessions. Accordingly, proposed Rule 7.34E is based on NYSE Arca Equities Rule 7.34, with non-substantive differences. The Exchange proposes one substantive difference from NYSE Arca Equities Rule 7.34 in that the Early Trading Session would begin at 7:00 a.m. Eastern Time rather than 4:00 a.m. Eastern Time. Similar to NYSE Arca Equities, the Exchange would begin accepting orders 30 minutes before the Early Trading Session begins, which means order entry acceptance would begin at 6:30 a.m. Eastern Time instead of at 3:30 a.m. Eastern Time. These differences would be reflected in proposed Rule 7.34E(a)(1).

In addition, because the Exchange would use Pillar phase II protocols, proposed Rule 7.34E(b)(1) would specify that an order entered without a trading session designation would be rejected. In addition, the Exchange proposes that it would not include rule text based on NYSE Arca Equities Rule 7.34(b)(2) or (3).

The following proposed rules in Section 3 of Rule 7E would be based on existing NYSE Arca Equities rules without any substantive differences:

• Proposed Rule 7.29E (Access) would provide that the Exchange would be available for entry and cancellation of orders by ETP Holders with authorized access. To obtain authorized access to the Exchange, each ETP Holder would be required to enter into a User Agreement. Proposed Rule 7.29E is based on NYSE Arca Equities Rule 7.29(a), without any substantive differences. The Exchange does not propose to include rule text based on NYSE Arca Equities Rule 7.29(b) because the Exchange would not offer sponsored access.

• Proposed Rule 7.30E (Authorized Traders) would establish requirements for ETP Holders relating to ATs. The proposed rule is based on NYSE Arca Equities Rule 7.30, without any substantive differences.

• Proposed Rule 7.32E (Order Entry) would establish requirements for order entry size. The proposed rule is based on NYSE Arca Equities Rule 7.32 without any substantive differences. The Exchange proposes that the current maximum order size references before subparagraph (a) in Rule 1000—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.33E (Capacity Codes) would establish requirements for

[20] *See also infra* proposed Rules 7.33E (Capacity Codes) and 7.41E (Clearance and Settlement).

[21] *See also infra* proposed Rule 7.36E regarding the display of orders on the Pillar trading platform.

[22] *See supra* note 10. The Exchange will file an amendment to the ETP Listing Rules Filing to add rule text for proposed paragraphs (b) and (c) of Rule 7.18E that would be based on NYSE Arca Equities Rule 7.18(b) and (c).

[23] As described in greater detail below, the Exchange proposes that the entirety of Rule 1000—Equities would not be applicable to trading on the Pillar trading platform.

capacity code information that ETP Holders must include with every order. The proposed rule is based on NYSE Arca Equities Rule 7.33 without any substantive differences. The Exchange proposes to use the title ''Capacity Codes'' instead of ''ETP Holder User,'' for proposed Rule 7.33E, which the Exchange believes provides more clarity regarding the content of the proposed rule. The Exchange proposes that the capacity code requirements in Supplementary Material .30(9) to Rule 132—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.35E (Auctions) would establish requirements for auctions on the Exchange. Because the Exchange proposes to automate all auctions and not have a DMM facilitate such auctions, the proposed rule is based on NYSE Arca Equities Rule 7.35 without any substantive differences. The Exchange proposes that paragraph (a)(10)(A), regarding Auction Collars for Trading Halt Auctions, which is based on a pilot rule of NYSE Arca Equities, would be in effect until SR–NYSEArca–2016–130 has been approved and a proposed rule change based on SR–NYSEArca–2016–130 for the Exchange is effective and operative.[24] Because proposed Rule 7.35E would govern all auctions, including the Early Open Auction, Core Open Auction, Trading Halt Auction, IPO Auction, and Closing Auction, the Exchange proposes that the following rules, which govern auctions on the Exchange, would not be applicable to trading on the Pillar trading platform: Rule 15—Equities (governing pre-opening indications and Opening Order Imbalance Information), Rule 115A—Equities (governing the opening process), Supplementary Material .40 to Rule 116—Equities (governing pair off of MOC and LOC orders at the close),[25] Rule 123C—Equities (governing the closing process), and Rule 123D—Equities (governing the opening and trading halts).

• Proposed Rule 7.36E (Order Ranking and Display) would establish requirements for how orders would be ranked and displayed at the Exchange. The proposed rule is based on NYSE Arca Equities Rule 7.36 without any substantive differences.

• Proposed Rule 7.37E (Order Execution and Routing) would establish requirements for how orders would execute and route at the Exchange, the data feeds that the Exchange would use, and Exchange requirements under the Order Protection Rule and the prohibition on locking and crossing quotations in NMS Stocks. This proposed rule is based on NYSE Arca Equities Rule 7.37 with one substantive difference. Because the Exchange would not be taking in data feeds from broker dealers or routing to Away Markets that are not displaying protected quotations, the Exchange proposes that proposed Rule 7.37E would not include rule text from paragraph (b)(3) of NYSE Arca Equities Rule 7.37, which specifies that an ETP Holder can opt out of routing to Away Markets that are not displaying a protected quotation, *i.e.,* broker dealers, or paragraph (d)(1) of NYSE Arca Equities Rule 7.37, which specifies that NYSE Arca Equities receives data feeds directly from broker dealers. The subject matter of proposed Rules 7.36E and 7.37E would address a cross-section of current rules. Accordingly, the Exchange proposes that the following rules would not be applicable to trading on the Pillar trading platform: Rule 15A—Equities (Order Protection Rule), Rule 19—Equities (Locking or Crossing Protected Quotations in NMS Stocks), Rule 60—Equities (Dissemination of Quotations), Rule 61—Equities (Recognized Quotations), Rule 72—Equities (Priority of Bids and Offers and Allocation of Executions), Supplementary Material .15 to Rule 79A—Equities,[26] Rule 1000(a) and (b)—Equities (Automatic Executions), Rule 1001—Equities (Execution of Automatically Executing Orders), Rule 1002—Equities (Availability of Automatic Execution Feature), and Rule 1004—Equities (Election of Buy Minus and Sell Plus).

• Proposed Rule 7.38E (Odd and Mixed Lot) would establish requirements relating to odd lot and mixed lot trading on the Exchange. The proposed rule is based on NYSE Arca Equities Rule 7.38 without any substantive differences.

• Proposed Rule 7.40E (Trade Execution and Reporting) would establish the Exchange's obligation to report trades to an appropriate consolidated transaction reporting system. The proposed rule is based on NYSE Arca Equities Rule 7.40 without any substantive differences. Because all reporting of transactions would be automated, the Exchange proposes that Rule 128A—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.41E (Clearance and Settlement) would establish requirements that all trades be processed for clearance and settlement on a locked-in and anonymous basis. Specifically, proposed Rules 7.41E(a), (b), (d), and (e) are based on NYSE Arca Equities Rule 7.41(a), (b), (d), and (e) with non-substantive differences not to include references to sponsored access, because the Exchange will not offer sponsored access. Proposed Rule 7.41E(c) is based on NYSE Rule 130(b), which reflects the circumstances when the Exchange may reveal the contra-party identity.[27] In addition, proposed Commentary .10 to Rule 7.41E is based on Supplementary Material .10 to Rule 132, defining the term ''Qualified Clearing Agency.'' The Exchange proposes to define this term for use in proposed Rule 7.41E(c). Because all trades would be reported by the Exchange on a locked-in basis, the Exchange proposes to specify that the following rules relating to clearance and settlement would not be applicable to trading on the Pillar trading system: Rule 130—Equities (Overnight Comparison of Exchange Transactions), Rule 132—Equities (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency), Rule 133—Equities (Comparison—Non-cleared Transactions), Rule 134 (Differences and Omissions—Cleared Transactions QTs), Rule 135—Equities (Differences and Omissions—Non-cleared Transactions ('DKs')), and Rule 136—Equities (Comparison—Transactions Excluded from a Clearance).

As noted above, the Exchange would not offer a Retail Liquidity Program when it trades on the Pillar trading platform. Accordingly, the Exchange would not propose rules based on NYSE Arca Equities Rule 7.44 and proposed Rules 7.36E, 7.37E, and 7.38E would not include cross references to Rule 7.44. The Exchange proposes that Rule 107C—Equities would not be applicable to trading on the Pillar trading platform.

Section 4 of Rule 7E would establish the Operation of a Routing Broker. Specifically, proposed Rule 7.45E (Operation of a Routing Broker) would establish the outbound and inbound function of the Exchange's routing broker and the cancellation of orders and the Exchange's error account. The proposed rule is based on NYSE Arca

[24] *See* Securities Exchange Act Release No. 79705 (December 29, 2016), 82 FR 1419 (January 5, 2017) (SR–NYSEArca–2016–169) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

[25] As described below, because the Exchange would not have Floor-based DMMs or trading, the remainder of Rule 116—Equities would not be applicable to trading on the Pillar trading platform.

[26] As described below, the Exchange proposes that Rule 79A in its entirety would not be applicable on the Pillar trading platform.

[27] *See* Securities Exchange Act Release No. 77930 (May 26, 2016), 81 FR 35410 (June 2, 2016) (SR–NYSE–2016–38) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

Equities Rule 7.45 without any substantive differences. The Exchange proposes that Rule 17—Equities (Use of Exchange Facilities and Vendor Services) would not be applicable to trading on the Pillar trading platform.[28]

Section 5 of Rule 7E would establish requirements relating to the Plan to Implement a Tick Size Pilot Program. Proposed Rule 7.46E (Tick Size Pilot Plan) would specify such requirements. The proposed rule is based on NYSE Arca Equities Rule 7.46 with a proposed substantive difference not to include cross references to a Retail Liquidity Program in proposed Rules 7.46E(c), (d)(1), and (e)(1). The Exchange also proposes to designate proposed Rules 7.46E(f)(4) and (f)(5)(B) as ''Reserved'' because the Exchange would not support Retail Price Improvement Orders or routing to Away Markets that are not displaying protected quotations on Pillar. The remaining differences are all non-substantive, including using the term MKT Only Order rather than Arca Only Order. The Exchange proposes that Rule 67—Equities (Tick Size Pilot Plan) would not be applicable to trading on the Pillar trading platform.

Rule 12E

The Exchange proposes to amend Rule 12E to delete the term ''Reserved,'' re-name it ''Arbitration,'' and establish the Exchange's arbitration procedures. The proposed rule text is based on current Rule 600—Equities, with a non-substantive change to use the term ''ETP Holder'' instead of ''member organization.'' The Exchange proposes to move this rule text to Rule 12E so that it has the same rule number as the arbitration rules of NYSE Arca Equities. The Exchange further proposes that Rule 600—Equities would not be applicable to trading on the Pillar trading platform.

Rule 13E

The Exchange proposes to amend Rule 13E to delete the term ''Reserved'' and re-name it ''Liability of Directors and Exchange.''

• Proposed Rule 13.2E (Liability of the Exchange) would establish requirements governing liability of the Exchange, including the limits on liability for specified circumstances. This proposed rule is based on Rule 905NY, which governs liability of the Exchange for its options market, and NYSE Arca Equities Rule 13.2 without any substantive differences. Because this rule would govern liability of the Exchange, the Exchange proposes that Rule 18—Equities would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 13.3E (Legal Proceedings Against Directors, Officers, Employees, or Agents) would establish requirements relating to legal proceedings against directors, officers, employees, agents, or other officials of the Exchange. The proposed rule is based on NYSE Arca Equities Rule 13.3 without any substantive differences.

• Proposed Rule 13.4E (Exchange's Costs of Defending Legal Proceedings) would establish the circumstances regarding who is responsible for the Exchange's costs in defending a legal proceeding brought against the Exchange. The proposed rule is based on NYSE Arca Equities Rule 13.4 without any substantive differences and Rule 61, which governs the Exchange's costs of defending legal proceedings for its options market. The Exchange proposes that Rule 25—Equities (Exchange Liability for Legal Costs) would not be applicable to trading on the Pillar trading platform.

Proposed Amendments to the Exchange's Off-Hours Trading Facility

After the Exchange transitions to the Pillar trading platform, the Exchange proposes to maintain certain functionality in its Off-Hours Trading Facility, which is currently described in Rules 900—Equities through 907—Equities (the ''Rule 900 Series''). Specifically, once trading begins on its Pillar trading platform, the Exchange proposes that the only function that would be available on its Off-Hours Trading Facility would be for ETP Holders to enter aggregate-price coupled orders.

The Exchange proposes that new Rule 7.39E would describe this Off-Hours Trading Facility functionality,[29] and that the entirety of the Rule 900 Series would not be applicable to trading on the Pillar trading platform.

• Proposed Rule 7.39E(a) would provide that Rule 7.39E would apply to all Exchange contracts made on the Exchange through its ''Off-Hours Trading Facility.'' This proposed rule text is based on the first sentence of Rule 900(a)—Equities. The Exchange would not include rule text specified in the second sentence of Rule 900(a)—Equities and text from Rule 900(b)—Equities through Rule 900(d)—Equities because it would not apply to the Off-Hours Trading Facility once trading begins on the Pillar trading platform.

• Proposed Rule 7.39E(b) would establish the definitions for the Off-Hours Trading Facility. Proposed Rule 7.39E(b)(i) would define the term ''Aggregate-Price Coupled Order'' to mean an order to buy or sell a group of securities, which group includes no fewer than 15 Exchange-listed or traded securities having a total market value of $1 million or more. This proposed definition is based on the definition of ''aggregate-price order'' in Rule 900(e)(i)—Equities with a non-substantive difference to use the term ''Aggregate-Price Coupled Order'' rather than ''aggregate-price order.'' Proposed Rule 7.39E(e)(b)(ii) would define the term ''Off-Hours Trading Facility,'' to mean the Exchange facility that permits ETP Holders to effect securities transactions on the Exchange under proposed Rule 7.39E and is based on Rule 900(e)(v)—Equities with a non-substantive difference to use the term ''ETP Holder'' instead of ''member or member organization.'' Proposed Rule 7.39E(b)(ii) would also define the term ''Off-Hours Trading'' to mean trading through the Off-Hours Trading Facility. This text is based on the second sentence of Rule 900(e)(v)—Equities. Because the Exchange would only be trading Aggregate-Price Coupled Orders in the Off-Hours Trading Facility, the Exchange proposes that Rule 7.39E(b) would not include definitions for ''closing price,'' ''closing-price order,'' or ''guaranteed price coupled order,'' which are defined in Rule 900(e)(ii)–(iv)—Equities.

• Proposed Rule 7.39E(c) would establish that only such NMS Stocks, as the Exchange may specify, including Exchange-listed securities and UTP Securities, would be eligible to trade in the Off-Hours Trading Facility. This proposed rule text is based on Rule 901—Equities with non-substantive differences to use Pillar terminology to describe which securities would be eligible to trade in the Off-Hours Trading Facility. The Exchange would not include rule text from Supplementary Material .10 of Rule 902, which provides that only the orders described in Rule 902 are eligible for Off-Hours Trading because it is redundant of proposed Rule 7.39E(c).

• Proposed Rule 7.39E(d) would establish the procedures for entering

[28] The subject matter of Rule 17(a)—Equities would be addressed in proposed Rule 13.2E. On Pillar, the Exchange would not operate with vendors and therefore would not need a vendor liability rule, as described in Rule 17(b)—Equities. Current Rule 17(c)—Equities would not be applicable because it addresses the same subject matter as proposed Rule 7.45E.

[29] NYSE Arca Equities Rule 7.39 addresses the adjustment of open orders, *e.g.,* orders with a good until canceled time-in-force instruction, due to corporate actions. Because the Exchange does not propose to have any open orders when trading on the Pillar trading platform, the Exchange will not adopt rule text based on NYSE Arca Equities Rule 7.39.

Aggregate-Price Coupled Orders into the Off-Hours Trading Facility. As proposed, an ETP Holder may only enter into the Off-Hours Trading Facility an Aggregate-Price Coupled Order to buy (sell) that is matched with an Aggregate-Price Coupled Order to sell (buy) the same quantities of the same securities, including in odd lot and mixed lot quantities. This proposed rule text is based on Rule 902(a)(iii)—Equities and Rule 902(g)—Equities with non-substantive differences to combine the two sections into a single section of rule text. The Exchange would not include rule text from Rule 902(a)(ii) because this specifies a Floor-based method to enter a coupled-order after the close and therefore would not be necessary on the Exchange's proposed Pillar trading system.

• Proposed Rule 7.39E(d)(i) would provide that transactions effected through the Off-Hours Trading Facility pursuant to Aggregate-Price Coupled Orders may be for delivery at such time as the parties entering the orders may agree. This proposed rule text is based on the first sentence of Rule 902(c)—Equities. The Exchange would not include the second sentence of Rule 902(c)—Equities in proposed Rule 7.39E(d)(i) because all orders in the Off-Hours Trading Facility would be Aggregate-Price Coupled Orders and thus subject to proposed Rule 7.39E(d)(i).

• Proposed Rule 7.39E(d)(ii) would provide that ETP Holders would mark all sell orders as ''long'' as appropriate. This proposed rule text is based on Rule 902(f)—Equities with a non-substantive difference to use the term ''ETP Holder'' instead of ''members and member organizations.''

• Proposed Rule 7.39E(d)(iii) would provide that each side of an Aggregate-Price Coupled Order entered on a matched basis would be traded on entry against the other side without regard to the priority of other orders entered into the Off-Hours Trading Facility. This proposed rule text is based on Rule 903(b)—Equities and 903(d)(i) with non-substantive differences to combine those rules into a single sub-section, use Pillar terminology, and use the term ''matched'' instead of ''coupled.''

• Proposed Rule 7.39E(d)(iv) would provide that a transaction described in this Rule would be an Exchange contract that is binding in all respects and without limit on the ETP Holder that enters any of the transaction's component orders and that the ETP Holder would be fully responsible for the Exchange contract. This proposed rule text is based on Rule 903(c)—Equities with non-substantive differences to use the term ''ETP Holder'' instead of ''member or member organization.''

• Proposed Rule 7.39E(e) would provide that each ETP Holder would report to the Exchange such information, in such manner, and at such times, as the Exchange may from time to time prescribe in respect of Off-Hours Trading, including, but not limited to, reports relating to Off-Hours Trading orders, proprietary or agency activity and activity in related instruments. This proposed rule text is based on Rule 905(a)—Equities with a non-substantive difference to use the term ''ETP Holder'' instead of ''member or member organization.''

• Proposed Rule 7.39E(f) would provide that each ETP Holder would maintain and preserve such records, in such manner, and for such period of time, as the Exchange may from time to time prescribe in respect of Off-Hours Trading, including, records relating to orders, cancellations, executions and trading volume, proprietary trading activity, activity in related instruments and securities and other records necessary to allow the ETP Holder to comply with the reporting provisions of proposed paragraph (e) of Rule 7.39E. This proposed rule text is based on rule 905(b)—Equities with non-substantive differences to use the term ''ETP Holder'' instead of ''member or member organization,'' and to eliminate the ''but not limited to'' text.

• Proposed Rule 7.39E(g) would provide that notwithstanding a trading halt in any security (other than a trading halt pursuant to Rule 7.12E (Trading Halts Due to Extraordinary Market Volatility)) or a corporate development, ETP Holders may enter Aggregate-Price Coupled Orders into the Off-Hours Trading Facility under this Rule. This proposed rule text is based on Supplementary Material .10 to Rule 906—Equities with non-substantive differences to cross-reference Rule 7.12E instead of Rule 80B and to use the term ''ETP Holders'' instead of ''members and member organizations.''

In addition to the provisions of the Rule 900 Series noted above, the Exchange would not include rule text from Rule 903(d)(ii)—Equities and Rule 906(b)—Equities in proposed Rule 7.39E because these provisions relate to Floor-based use of the Off-Hours Trading Facility, which would not be available on the proposed Pillar trading platform. In addition, the Exchange proposes that Rule 7.39E would not include any provisions from Rule 907, which describes now-obsolete crossing session functionality.

Current Rules That Would Not Be Applicable to Pillar

As described in more detail above, in connection with the proposed rules to support cash equities trading on the Pillar trading platform, the Exchange has identified current Exchange rules that would not be applicable because they would be superseded by a proposed rule. The Exchange has identified additional current rules that would not be applicable to trading on Pillar. These rules do not have a counterpart in the proposed Pillar rules, described above, but would be obsolete on the new, fully-automated trading platform.

The main category of rules that would not be applicable to trading on the Pillar trading platform are those that are specific to Floor-based trading, including requirements relating to DMMs and Floor brokers. For this reason, the Exchange proposes that the following Floor-specific rules would not be applicable to trading on the Pillar trading platform:

• Paragraphs (a), (i), and (j) of Rule 2—Equities (''Member,'' ''Membership,'' and ''Member Firm,'' etc.) (defining terms relating to Floor-based trading, *i.e.,* member, DMM, and DMM unit).
• Rule 6—Equities (Floor).
• Rule 6A—Equities (Trading Floor).
• Rule 35—Equities (Floor Employees to be Registered).
• Rule 36—Equities (Communications Between Exchange and Members' Offices).
• Rule 37—Equities (Visitors).
• Rule 46—Equities (Floor Officials—Appointments).
• Rule 46A—Equities (Executive Floor Governors).
• Rule 47—Equities (Floor Officials—Unusual Situations).
• Rule 52—Equities (Dealings on the Exchange—Hours).
• Rule 53—Equities (Dealings on Floor—Securities).
• Rule 54—Equities (Dealings on Floor—Persons).
• Rule 70—Equities (Execution of Floor broker interest).
• Rule 74—Equities (Publicity of Bids and Offers).
• Rule 75—Equities (Disputes as to Bids and Offers).
• Rule 76—Equities ('Crossing' Orders).
• Rule 77—Equities (Prohibited Dealings and Activities).
• Rule 79A—Equities (Miscellaneous Requirements on Stock Market Procedures).
• Rule 90—Equities (Dealings by Members on the Exchange).
• Rule 91—Equities (Taking or Supplying Securities Named in Order).

• Rule 95—Equities (Discretionary Transactions).
• Rule 103A—Equities (Member Education).
• Rule 106A—Equities (Taking Book or Order of Another Member).
• Rule 108—Equities (Limitation on Members' Bids and Offers).
• Rule 112—Equities (Orders Initiated 'Off the Floor').
• Rule 116—Equities ('Stop' Constitutes Guarantee).
• Rule 117—Equities (Orders of Members To Be in Writing).
• Rule 121—Equities (Records of DMM Units).
• Rule 122—Equities (Orders with More than One Broker).
• Rule 123—Equities (Record of Orders).
• Rule 123A—Equities (Miscellaneous Requirements).
• Rule 123B—Equities (Exchange Automated Order Routing System).
• Rule 126—Equities (Odd-Lot Dealers General).
• Rule 127—Equities (Block Crossed Outside the Prevailing Exchange Quotation).
• Rule 128B—Equities (Publication of Changes, Corrections, Cancellations or Omissions and Verifications of Transactions).
• Rule 131—Equities (Comparison—Requirements for Reporting Trades and Providing Facilities).
• Rule 301—Equities (Qualifications for Membership).
• Rule 303—Equities (Limitation on Access to Floor).
• Rule 304A—Equities (Member Examination Requirements).
• Rule 440I—Equities (Records of Compensation Arrangements—Floor Brokerage).
• Rule 1000(d)–(g)—Equities (Capital Commitment Schedule).

In addition, the Exchange proposes that the following rules would not be applicable to trading on the Pillar platform.

• Rule 11—Equities (Effect of Definitions) because Rule 1.1E supersedes any description of definitions.
• Rule 23—Equities (New York local time) because all references to times in the proposed Pillar trading platform rules refer to ''Eastern Time.''
• Rule 24—Equities (Change in Procedure to Conform to Changes Hours of Trading) because proposed Rule 7.1E would specify the hours of the Exchange.
• Rule 86—Equities (NYSE MKT Bonds) because the Exchange would not trade bonds on the Pillar trading platform.
• Rule 107B—Equities (Supplemental Liquidity Providers) because the Exchange would not support the Supplemental Liquidity Provider program on its proposed Pillar trading platform.
• Rule 119—Equities (Change in Basis from ''And Interest'' to ''Flat'') because the Exchange would not trade bonds on its proposed Pillar trading platform.
• Rule 131A—Equities (A Member Organization Shall Use Its Own Mnemonic When Entering Orders) because the Exchange would use MPIDs rather than mnemonics on its proposed Pillar trading platform.

Proposed Deletion of Rules Designated ''Reserved''

To simplify the Exchange's rules, the Exchange proposes to delete Equities rules that are currently designated ''Reserved.'' [30] The Exchange believes it would reduce confusion and promote transparency to delete references to rules that do not have any substantive content. The Exchange further believes that because it is transitioning to a new rule numbering framework, maintaining these rules on a reserved basis is no longer necessary.

Section 11(a) of the Act

Section 11(a)(l) of the Act [31] (''Section 11(a)(1)'') prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, ''covered accounts'') unless an exception to the prohibition applies. Rule 11a2–2(T) under the Act (''Rule 11a2–2(T)''),[32] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(l) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution (although the member may participate in clearing and settling the transaction); (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or its associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

With the proposed transition of the Exchange to a fully automated electronic trading model that does not have a trading floor, the Exchange believes that the policy concerns Congress sought to address in Section 11(a)(1), *i.e.,* the time and place advantage that members on exchange trading floors have over non-members off the floor and the general public—would not be present. Specifically, on the Pillar trading system, buy and sell interest will be matching in a continuous, automated fashion. Liquidity will be derived from quotes as well as orders to buy and orders to sell submitted to the Exchange electronically by ETP Holders from remote locations. The Exchange further believes that ETP Holders entering orders into the Exchange's Pillar trading system will satisfy the requirements of Rule 11a2–2(T) under the Act, which provides an exception to Section 11(a)'s general prohibition on proprietary trading.

The four conditions imposed by the ''effect versus execute'' rule are designed to put members and non-members of an exchange on the same footing, to the extent practicable, in light of the purpose of Section 11(a). For the reasons set forth below, the Exchange believes the structure and characteristics of its proposed Pillar trading system do not result in disparate treatment of members and non-members and places them on the ''same footing'' as intended by Rule 11a2–2(T).

1. *Off-Floor Transmission.* Rule 11a2–2(T) requires orders for a covered account transaction to be transmitted from off the exchange floor. The Commission has considered this and other requirements of the rule in the context of automated trading and electronic order handling facilities operated by various national securities

[30] *See* Rules 16—Equities; 20—Equities; 21—Equities (Disqualification of Directors on Listing of Securities); Rule 26—Equities (Disqualification of Directors on Listing of Securities); Rule 29—Equities—Rule 34—Equities; Rule 38—Equities—Rule 44—Equities; Rule 45—Equities (Equities); Rule 50—Equities; Rule 57—Equities—Rule 59—Equities; Rule 60A—Equities; Rule 65—Equities; Rule 69—Equities; Rule 92—Equities; Rule 106—Equities; Rule 107—Equities; Rule 109—Equities—Rule 111—Equities; Rule 115—Equities; Rule 118—Equities; Rule 123G—Equities; Rule 124—Equities; Rule 132A—Equities; Rule 132B—Equities; Rule 132C—Equities; Rule 305—Equities—307—Equities; Rule 309—Equities; Rules 314—Equities—318—Equities; Rule 319—Equities; Rule 322—Equities; Rules 323—Equities—324—Equities; Rule 325—Equities; Rule 326(a)—Equities; Rule 326(b)—Equities; Rule 326(c)—Equities; Rule 326(d)—Equities; Rule 327—Equities; Rule 328—Equities; Rule 329—Equities; Rule 343—Equities; Rule 440A—Equities; and Rule 1003—Equities.

[31] 15 U.S.C. 78k(a)(1).

[32] 17 CFR 240.11a2–2(T).

exchanges in a 1979 Release [33] as well as more applications of Rule 11a2–2(T) in connection with the approval of the registrations of national securities exchanges.[34] In the context of these automated trading systems, the Commission has found that the off-floor transmission requirement is met if an order for a covered account is transmitted from a remote location directly to an exchange's floor by electronic means.[35] Because the Exchange would not have a physical trading floor once it transitions to the Pillar trading platform, and like other all electronic exchanges, the Exchange's Pillar trading system would receive orders from ETP Holders electronically through remote terminals or computer-to-computer interfaces, the Exchange therefore believes that its trading system satisfies the off-floor transmission requirement.

2. *Non-Participation in Order Execution.* The ''effect versus execute'' rule further provides that neither the exchange member nor an associated person of such member participate in the execution of its order. This requirement was originally intended to prevent members from using their own brokers on an exchange floor to influence or guide the execution of their orders.[36] The rule, however, does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted, provided such cancellations or modifications are transmitted from off an exchange floor.[37] In the 1979 Release discussing both the Pacific Stock Exchange's COM EX system and the Philadelphia Stock Exchange's PACE system, the Commission noted that a member relinquishes any ability to influence or guide the execution of its order at the time the order is transmitted into the systems, and although the execution is automatic, the design of such systems ensures that members do not possess any special or unique trading advantages in handling orders after transmission to the systems.[38] The Exchange's Pillar trading system would at no time following the submission of an order allow an ETP Holder or an associated person of such member to acquire control or influence over the result or timing of an order's execution. The execution of an ETP Holder's order would be determined solely by what quotes and orders are present in the system at the time the member submits the order and the order priority based on Exchange rules. Therefore, the Exchange believes the non-participation requirement would be met through the submission and execution of orders in the Exchange's Pillar trading system.

3. *Execution Through an Unaffiliated Member.* Although Rule 11a2–2(T) contemplates having an order executed by an exchange member, unaffiliated with the member initiating the order, the Commission has recognized the requirement is satisfied where automated exchange facilities are used as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange. In the 1979 Release, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). Because the design of the Exchange's Pillar trading system ensures that no ETP Holder has any special or unique trading advantages over nonmembers in the handling of its orders after transmitting its orders to the Exchange, the Exchange believes that its Pillar trading system would satisfy this requirement.

4. *Non-Retention of Compensation for Discretionary Accounts.* Finally, Rule 11a2–2(T) states, in the case of a transaction effected for the account for which the initiating member or its associated person exercises investment discretion, in general, the member or its associated person may not retain compensation for effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to both Section 11(a) of the Exchange Act and Rule 11a2–2(T). The Exchange will advise its membership through the issuance of a Regulatory Bulletin that those ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the exemption in Rule 11a2–2(T) from the prohibition in Section 11(a) of the Exchange Act.

In conclusion, The Exchange believes that its Pillar trading system would satisfy the four requirements of Rule 11a2–2(T) as well as the general policy objectives of Section 11(a). The Exchange's proposed Pillar trading system would place all users, members and non-members, on the ''same footing'' with respect to transactions on the Exchange for covered accounts as intended by Rule 11a2–2(T). As such, no Exchange ETP Holder would be able to engage in proprietary trading in a manner inconsistent with Section 11(a).

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As discussed above, because of the technology changes associated with the migration to the Pillar trading platform, the Exchange will announce by Trader Update when rules with an ''E'' modifier will become operative.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[39] in general, and furthers the objectives of Section 6(b)(5),[40] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules to support Pillar on the Exchange would remove

[33] *See* Securities Exchange Act Release No. 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the lntermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System (''COM EX''), and the Phlx's Automated Communications and Execution System (''PACE'')) (''1979 Release'').

[34] Securities Exchange Act Release Nos. 53128 (January 13, 2006) 71 FR 3550 (January 23, 2006) (File No. 10–13 1) (order approving Nasdaq Exchange registration); 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008) (order approving BATS Exchange registration); 61152 (December 10, 2009) 74 FR 66699 (December 16, 2009) (order approving C2 exchange registration); and 78101 (June 17, 2016), 81 FR 41142, 41164 (June 23, 2016) (order approving Investors Exchange LLC registration).

[35] *See, e.g.,* Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange (''ArcaEx'') as electronic trading facility of the Pacific Exchange (''PCX'') (''Arca Ex Order'')); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System (''1978 Release'')).

[36] *Id.* 1978 Release, *supra* note 35.

[37] *Id.*

[38] 1979 Release, *supra,* note 33.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market because they provide for a complete set of rules to support the Exchange's transition to a fully automated cash equities trading model on the Pillar trading platform.

Generally, the Exchange believes that the proposed rules would support the Exchange's transition to a fully automated cash equities trading market with a price-time priority model because they are based on the rules of its affiliated market, NYSE Arca Equities. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system because they are based on the approved rules of another exchange.

More specifically, the Exchange believes that the proposed definitions for Rule 1.1E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed definitions are terms that would be used in the additional rules proposed by the Exchange. The Exchange also believes that proposed Rule 2E would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements to obtain an ETP for trading on the Exchange's Pillar trading platform. In addition, the proposed rules governing employee registrations would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would ensure that employees of broker-dealers that are members of both NYSE Arca Equities and the Exchange would be subject to the same registration requirements. The proposed rule change would therefore also promote just and equitable principles of trade by requiring the same registration requirements for the same type of trading on affiliated exchanges.

The Exchange believes that proposed Rule 3E would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would move existing rules to new rule numbering that aligns with the Framework Filing rule numbering. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and members.

The Exchange believes that proposed Rule 6E is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it would establish regulatory requirements for its ETP Holders. Proposed Rule 6.3E is designed to prevent fraudulent and manipulative acts and practices because it addresses the potential misuse of material non-public information and is based on NYSE Arca Equities Rule 6.3. The remaining rules proposed for Rule 6E are based on existing Exchange rules and the Exchange believes it would make its rules easier to navigate to move the text of these rules to rule numbers consistent with the Framework Filing.

The Exchange believes that proposed Rule 7E would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules that would govern trading on the Exchange, including post-trade requirements, that would establish the Exchange as a fully automated trading market with a price-time priority trading model. The proposed rules are based on the rules of NYSE Arca Equities, and include rules governing orders and modifiers, ranking and display, execution and routing, trading sessions, and auctions. The Exchange believes that the proposed substantive difference that its proposed Early Trading Session would begin at 7:00 a.m. Eastern Time, rather than 4:00 a.m. Eastern Time, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency of the trading hours of the Exchange when it begins trading on the Pillar trading platform.

The Exchange believes that proposed Rule 7.39E, which would govern the Off-Hours Trading Facility on the Exchange, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would use Framework Filing rule numbering and Pillar terminology to describe the Off-Hours Trading Facility that would continue to be available once the Exchange transitions to Pillar. Proposed Rule 7.39E, which would offer ETP Holders the ability to enter Aggregate-Price Coupled Orders, is based on the Rule 900 Series.

The Exchange believes that proposed Rule 12E would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would move an existing rule to new rule numbering that aligns with the Framework Filing rule numbering. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and members.

The Exchange believes that proposed Rule 13E would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would harmonize the Exchange's rules governing liability for its equity market with Exchange rules governing liability for its options markets, and the rules governing liability on NYSE Arca Equities. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and members.

The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to specify which current rules would not be applicable to trading on the Pillar trading platform. The Exchange believes that the following legend, which would be added to existing rules, ''This rule is not applicable to trading on the Pillar trading platform,'' would promote transparency regarding which rules would govern trading on the Exchange once it transitions to Pillar. The Exchange has proposed to add this legend to rules that would be superseded by proposed rules or rules that would not be applicable because they concern Floor-based trading. The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to delete rule numbers that are currently ''reserved'' because it would reduce confusion and promote transparency to delete references to rules that do not have any substantive content. The Exchange further believes that because it is transitioning to a new rule numbering framework, maintaining these rules on a reserved basis is no longer necessary.

For reasons described above, the Exchange believes that the proposal for the Exchange to operate on a fully automated trading market without a Floor is consistent with Section 11(a) of the Act and Rule 11a2–2(T) thereunder.

Finally, the Exchange believes that proposed Rule 2.17E furthers the objectives of Section 6(b)(4) of the Act,[41] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. Specifically, proposed Rule 2.17E does not establish a new fee. Rather, the proposed rule is

[41] 15 U.S.C. 78f(b)(4).

based on existing provisions of current Rule 440H—Equities relating to Activity Assessment Fees without any substantive differences. The Exchange proposes to move the rule text to Rule 2.17E to use rule numbering for Pillar that is consistent with the Framework Filing, with non-substantive differences to use Pillar terminology, and not move obsolete rule text.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to propose rules to support the Exchange's new Pillar trading platform, which would be a fully automated cash equities trading market that trades all NMS Stocks and is based on the rules of NYSE Arca Equities. The Exchange operates in a highly competitive environment in which its unaffiliated exchange competitors operate multiple affiliated exchanges that operate under common rules. By moving the Exchange to a fully automated trading model that trades all NMS Stocks, the Exchange believes that it will be able to compete on a more level playing field with its exchange competitors that similarly trade all NMS Stocks on fully automated trading models. In addition, by basing its rules on those of NYSE Arca Equities, the Exchange will provide its members with consistency across affiliated exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2017–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2017–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–01 and should be submitted on or before March 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02990 Filed 2–14–17; 8:45 am]

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[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80002; File No. SR–NYSE–2016–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1–4, To Amend the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

February 9, 2017.

On July 29, 2016, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) provide additional information regarding access to various NYSE trading and execution services and establish fees for connectivity to certain NYSE market data feeds; and (2) provide and establish fees for connectivity to data feeds from third party markets and other content service providers; access to the trading and execution services of Third Party markets and other content service providers; connectivity to Depository Trust & Clearing Corporation services; connectivity to third party testing and certification feeds; and the use of virtual control circuits by Users in the Data Center.

The Commission published the proposed rule change for comment in the **Federal Register** on August 17, 2016.[3] The Exchange filed Amendment No. 1 to the proposed rule change on August 16, 2016.[4] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–78556 (August 11, 2016), 81 FR 54877.

[4] Amendment No. 1 (i) amended the third party data feed MSCI from 20 Gigabits (''Gb'') to 25 Gb and amended the price from $2000 to $1200; (ii) clarified the costs associated with providing a greater amount of bandwidth for Premium NYSE Data Products for a particular market as compared to the bandwidth requirements for the Included Data Products for that same market; (iii) provided further details on Premium NYSE Data Products,

Continued

published Amendment No. 1 for comment in the **Federal Register** on September 26, 2016.[5] The Commission received one comment in response to the proposed rule change, as modified by Amendment No. 1, to which the Exchange responded.[6] On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 15, 2016.[7]

On November 2, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[8] On November 21, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[9] Following the Order Instituting Proceedings, the Commission received several additional comment letters.[10] On December 9, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[11] Amendment No. 3, which supersedes and replaces the proposed rule change, as modified by Amendment Nos. 1 and 2, in its entirety, was published for comment in the **Federal Register** on December 29, 2016.[12] On January 17, 2017, the Exchange responded to the comment letters submitted after the OIP and prior to January 17, 2017.[13] On February 7, 2017, the Exchange filed Amendment No. 4 to the proposed rule change.[14]

Section 19(b)(2) of the Act[15] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on August 17, 2016.[16] February 13, 2017 is 180 days from that date, and April 14, 2017 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment Nos. 1–4, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to the comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[17] designates April 14, 2017 as the date by which the Commission should either approve or disapprove the proposed rule change, as modified by Amendments Nos. 1–4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02996 Filed 2–14–17; 8:45 am]

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including their composition, product release dates, and further detail on the reasonableness of their applicable fees; (iv) added an explanation for the varying fee differences for the same Gb usage for third party data feeds, DTCC, and Virtual Control Circuit.

[5] *See* Securities Exchange Act Release No. 34–78887 (September 20, 2016), 81 FR 66095.

[6] *See* letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX Letter I''), dated September 9, 2016.

On September 23, 2016, the NYSE submitted a response to the IEX letter (''Response Letter I'') which is available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-3.pdf.*

[7] *See* Securities Exchange Act Release No. 34–78966 (September 28, 2016), 81 FR 68475.

[8] Amendment No. 2 is available on the Commission's Web site at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-4.pdf.*

[9] *See* Securities Exchange Act Release 34–79316 (November 15, 2016), 81 FR 83303.

[10] *See* letter to Brent J. Fields, Commission, from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 12, 2016 (''Citadel Letter''); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated December 12, 2016 (''SIFMA Letter I''); letter to Brent J. Fields, Commission, from Joe Wald, Chief Executive Officer, Clearpool Group, dated December 16, 2016 (''Clearpool Letter''); letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated December 21, 2016 (''IEX Letter II''); letter to Brent J. Fields, Commission, from David L. Cavicke, Chief Legal Officer, Wolverine LLC (''Wolverine Letter''); letter to Bent J. Fields, Secretary, Commission, from Stefano Durdic, Managing Director, R2G Services, LLC, dated January 21, 2017 (''R2G Letter''); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated February 6, 2017 (''SIFMA Letter II''). All comments received by the Commission on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml.*

[11] Amendment No. 3, as filed by the Exchange, is available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-5.pdf.*

[12] *See* Securities Exchange Act Release No. 34–79674 (December 22, 2016), 81 FR 96053 (''Notice of Current Proposal'').

[13] *See* NYSE Response Letter II (''Response Letter II''), available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1502013-130586.pdf.* The R2G and SIFMA II Letters, *supra* note 10, were submitted after the Response Letter II.

[14] Amendment No. 4, as filed by the Exchange, is available at *https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1570711-131690.pdf.*

[15] 15 U.S.C. 78s(b)(2).

[16] *See supra* note 3.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79998; File No. SR–NYSEMKT–2017–05]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rules 7.29E and 1.1E To Provide for a Delay Mechanism

February 9, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 27, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 7.29E and 1.1E to provide for a Delay Mechanism. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 7.29E and 1.1E to provide for an intentional delay to specified order processing, which would be referred to as the ''Delay Mechanism.''

To effect its transition to Pillar, the Exchange has adopted the rule numbering framework of the NYSE Arca Equities, Inc. (''NYSE Arca Equities'') rules for Exchange cash equities trading on the Pillar trading platform.[4] As described in the Framework Filing, the Exchange is denoting the rules applicable to cash equities trading on Pillar with the letter ''E'' to distinguish such rules from current Exchange rules with the same numbering.

The Exchange has also proposed trading rules for cash equity trading on Pillar, which are based on the trading rules of NYSE Arca Equities.[5] With Pillar, the Exchange has proposed to transition its cash equities trading platform from a Floor-based market with a parity allocation model to a fully automated price-time priority allocation model that trades all NMS Stocks.

The Exchange proposes a delay mechanism on Pillar that would add the equivalent of 350 microseconds of latency to inbound and outbound order messages, as described in greater detail below. The requirements for the proposed Delay Mechanism would be set forth in Rule 7.29E, and a definition of ''Delay Mechanism'' would be in Rule 1.1E. The Exchange's proposed Delay Mechanism is based in part on the operation of the intentional delay mechanism of Investors Exchange LLC (''IEX''). In addition, when the Exchange implements the Delay Mechanism, it would no longer offer Add Liquidity Only (''ALO'') Order or Day Intermarket Sweep Order (''ISO'') functionality and all Pegged Orders would not be displayed.[6]

Proposed Rule Changes

As noted above, the proposed Delay Mechanism would function similarly to the intentional delay mechanism of IEX, which IEX refers to as the ''IEX POP.'' The IEX POP adds the equivalent of 350 microseconds of latency between the network access point of the POP and IEX's matching engines at its primary data center.[7] IEX uses a hardware solution to add its intentional delay via physical distance and coiled optical fiber. Similarly, using a software solution, the Exchange proposes that the Delay Mechanism would add 350 microseconds of latency to the processing of specified inbound and outbound communications.

As described in greater detail below, except when routing orders, the Exchange's proposed Delay Mechanism would provide for the addition of latency under the same circumstances as the IEX POP.

The Exchange proposes to add paragraph (y) to Rule 1.1E, which is currently ''Reserved,'' to define ''Delay Mechanism.'' As proposed, the Delay Mechanism would mean a delay that is an equivalent of 350 microseconds of latency that is added to specified order processing. This delay would be in addition to any natural latency inherent in accessing the Exchange and Away Markets.[8]

Proposed Rule 1.1E(y) would further provide that due to force majeure events and acts of third parties, the Exchange does not guarantee that the delay would always be 350 microseconds and that the Exchange would periodically monitor such latency, and would make adjustments to the latency as reasonably necessary to achieve consistency with the 350 microsecond target as soon as commercially practicable. The proposed rule would further provide that, if the Exchange determines to increase or decrease the delay period, it would submit a rule filing pursuant to Section 19 of the Act. This proposed rule text is based on Supplementary Material .20 [sic] (POP Latency) to IEX Rule 11.510 without any substantive differences.

The Exchange proposes to add paragraph (b) to Rule 7.29E to describe the Delay Mechanism.[9] Under proposed Rule 7.29E(b)(1), the Exchange would apply the Delay Mechanism to the following:

• *All inbound communications from an ETP Holder (proposed Rule 7.29E(b)(1)(A)).* This proposed rule text is based on IEX Rule 11.510(b)(1), which provides that ''Inbound POP Latency'' applies to all inbound communications (including, without limitation, order messages and cancel messages). The Exchange's proposal to apply the Delay Mechanism to all inbound communications from an ETP Holder would cover all incoming orders, as well as any requests to cancel or modify a resting order. The Exchange's proposal to apply the Delay Mechanism to all inbound communications from an ETP Holder would have the same effect as IEX's Inbound POP Latency because it would add 350 microseconds of delay to all incoming messages to the Exchange.

• *All outbound communications to an ETP Holder (proposed Rule 7.29E(b)(1)(B)).* This proposed rule text is based on IEX Rule 11.510(b)(2), which provides that ''Outbound POP Latency'' applies to all outbound communications (including, without limitation, execution report messages and quote update messages). The Exchange's proposal to apply the Delay Mechanism to all outbound communications to an ETP Holder would cover Exchange messages to an ETP Holder that an order has been accepted, rejected, cancelled, modified, or executed. The Exchange's proposal to apply the Delay Mechanism to all outbound communications to an ETP Holder would have the same effect as IEX's Outbound POP Latency because it would add 350 microseconds of delay to all outgoing messages to an ETP Holder from the Exchange. Together with the application of the proposed Delay Mechanism to all inbound

[4] *See* Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR–NYSEMKT–2016–97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the ''Framework Filing''). In addition, the Exchange has filed a proposed rule change to support Exchange trading of securities listed on other national securities exchanges on an unlisted trading privileges basis, including Exchange Traded Products (''ETP'') listed on other exchanges. *See* Securities Exchange Act Release No. 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR–NYSEMKT–2016–103) (Notice) (the ''ETP Listing Rules Filing'').

[5] *See* SR–NYSEMKT–2017–1 (the ''Trading Rules Filing''). The Exchange has also filed a proposed rule change to establish market maker obligations when trading on the Pillar trading platform. *See* SR–NYSEMKT–2017–04 (the ''Market Maker Filing''). After the Commission approves the ETP Listing Rules Filing, Market Maker Filing, and Trading Rules Filing, the Exchange will transition to Pillar on a date announced by Trader Update.

[6] In the Trading Rules Filing, the Exchange proposes Rule 7.31E (Orders and Modifiers), which is based on NYSE Arca Equities Rule 7.31. Therefore, as proposed, ALO Order, Day ISO Order, and Pegged Order functionality for the Exchange would be based on NYSE Arca Equities ALO, Day ISO, and Pegged Order functionality, including that Primary Pegged Orders would be required to have a minimum display quantity. Because the Exchange would transition to Pillar once the Commission approves the ETP Listing Rules Filing, Market Maker Filing, and Trading Rules Filing, which may be prior to approval of the Delay Mechanism, before implementing the Delay Mechanism, the Exchange will file a separate proposed rule change to eliminate ALO and Day ISO Orders and related functionality and to provide that Primary Pegged Orders would not be displayed.

[7] *See* IEX Rule 11.510 (Connectivity).

[8] The term ''Away Market'' is defined in Rule 1.1E(ff) to mean any exchange, alternate trading system (''ATS'') or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange and that the Exchange will designate from time to time those ATS's or other broker-dealers that qualify as Away Markets.

[9] In the Trading Rules Filing, the Exchange has proposed that Rule 7.29E would be titled ''Access'' and has proposed paragraph (a) to Rule 7.29E to specify the general access requirements to the Exchange.

communications to the Exchange, there would be 700 microseconds of additional round-trip latency in a report received by an ETP Holder of an execution or partial execution on the Exchange.

• *All outbound communications the Exchange routes to an Away Market (proposed Rule 7.29E(b)(1)(C)) and all inbound communications from an Away Market about a routed order (proposed Rule 7.29E(b)(1)(D)).* Under proposed Rule 7.37E, the Exchange determines whether to route an order after it has matched orders for execution against orders in the Exchange Book.[10] If the Exchange determines to route an order, either because it would trade through a protected quotation or has an instruction to be routed to a primary listing market, the Exchange would apply the Delay Mechanism before routing such order. This proposed rule text would therefore provide that an order that the Exchange routes to an Away Market would have 700 microseconds of added delay before it is routed: First a 350 microsecond delay before the order is received by the Exchange's matching engines under proposed Rule 7.29E(b)(1)(A) and a second 350 microsecond delay under proposed Rule 7.29E(b)(1)(C) when the order is routed. After the Exchange applies the Delay Mechanism to a routable order, the routed order would be subject to any natural latency inherent in accessing such Away Market.

Any inbound communications to the Exchange from the Away Market about such routed order, whether a rejection or execution report, would also be subject to the Delay Mechanism. In addition, any such report forwarded to the ETP Holder that entered the order would then be subject to an additional Delay Mechanism under proposed Rule 7.29E(b)(1)(B). Accordingly, the Exchange would add a total of 1,400 microseconds of round-trip delay to an order that the Exchange routes to an Away Market. The Exchange's proposed Delay Mechanism for orders that route would function differently from the IEX POP with respect to routable orders. Under IEX Rule 11.510, a routable order on IEX must traverse the IEX POP to access IEX's routing logic, and any orders that the IEX routing logic determines to send to the IEX matching engine must traverse an additional IEX POP. However, IEX does not include an IEX POP between its routing logic and routing to markets other than IEX.[11] Accordingly, a routable order sent to IEX has 700 microseconds of delay before it reaches the IEX matching engine and an additional 700 microseconds of delay before any reports from the IEX matching engine are sent to the order sender, for a round-trip delay of 1,400 microseconds. However, a routable order sent to IEX's routing logic that is routed to an away market has only 350 microseconds of additional delay for inbound orders and only 350 microseconds of delay for outbound information to the order sender, for a round-trip delay of 700 microseconds.

The Exchange believes its proposed application of the Delay Mechanism to routable orders is consistent with how the Exchange already functions, which is that orders are matched for execution before routing (unless the order has an instruction to route to the primary listing market). As such, if there is an execution opportunity on the Exchange, an order would be subject to the same additional latency regardless of whether the order is routable or not. Only if the Exchange were to route an order would it add the latency of the Delay Mechanism a second time. The Exchange believes that this additional application of the proposed Delay Mechanism would ensure that the Exchange would not have a speed advantage over ETP Holders in routing the unexecuted quantity of an order to an Away Market. Specifically, an ETP Holder would be subject to the same latency in learning of an execution on the Exchange (350 microseconds after the execution) as the Exchange would apply to routing such order (350 microseconds before routing such order). Accordingly, an ETP Holder that would rather route directly to Away Markets would be able to operate on a level playing field with the Exchange's routing broker.

• *All outbound communications (e.g., bids, offers, and trades) to the Exchange's proprietary data feeds (proposed Rule 7.29E(b)(1)(E)).* This proposed rule text is based on IEX Rule 11.510(b)(1) [sic], which specifies IEX's Outbound POP Latency. The Exchange's proposal to apply the Delay Mechanism to all outbound messages to its proprietary data feeds would have the same effect as IEX's Outbound POP Latency because it would add 350 microseconds of delay before providing such information to the Exchange's proprietary data feed.

Under proposed Rule 7.29E(b)(2), the Exchange would not apply the Delay Mechanism to the following:

• *All inbound communications from data feeds (proposed Rule 7.29E(b)(2)(A)).* This proposed rule text is based on IEX Rule 11.510(c)(2)(A), which provides that IEX communications with away market centers to receive proprietary market data do not traverse the IEX POP, and IEX Rule 11.510(c)(2)(B), which provides that IEX communications with the SIPs to receive data feeds do not traverse the IEX POP. By referencing data feeds, proposed Rule 7.29E(b)(2)(A) would be applicable to data feeds received directly from Away Markets and data feeds disseminated by a plan processor. Accordingly, the Exchange's proposal not to apply the Delay Mechanism in these circumstances would have the same effect as how IEX does not apply the IEX POP to its receipt of market data.

• *Order processing and order execution on the Exchange's Book (proposed Rule 7.29E(b)(2)(B)).* This proposed rule text is based on IEX Rule 11.510(c)(1), which provides that order book processing does not traverse the IEX POP. Accordingly, all actions taken within the Exchange's Book, including calculating the BBO, NBBO, or PBBO,[12] assigning working prices and working times to orders,[13] and ranking and executing orders, would not be subject to an additional delay. The Exchange's proposal not to apply the Delay Mechanism to order processing and order execution on the Exchange's Book would have the same effect as how IEX conducts order processing and order execution within its book. For example, the Exchange would not apply the Delay Mechanism to re-price Pegged Orders, which would not be displayed on the Exchange. As with IEX, the Exchange would update the working price of Pegged Orders based on an updated PBBO without any additional delay.

• *All outbound communications (e.g., bids, offers, and trades) to the plan processors under Rules 601 and 602 of Regulation NMS (proposed Rule*

[10] *See* proposed Rule 7.37E(b), Trading Rules Filing, *supra* note 5 (''Unless an order has an instruction not to route, after being matched for execution with any contra-side orders in the Exchange Book pursuant to paragraph (a) of this Rule, marketable orders will be routed to Away Market(s).'')

[11] *See* IEX Rule 11.510(c)(3)(A).

[12] The term ''BBO'' is defined in Rule 1.1E(h) as the best bid or offer that is a protected quotation on the Exchange. The terms ''NBBO'' and ''PBBO'' are defined in Rule 1.1E(dd) as the national best bid or offer and the protected best bid and offer, respectively.

[13] In the Trading Rules Filing, *supra* note 5, the Exchange proposes to define the term ''working price'' in Rule 7.36E(a)(3) as the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order and define the term ''working time'' in Rule 7.36E(a)(4) as the effective time sequence assigned to an order for purposes of determining its priority ranking.

7.29E(b)(2)(C)). This proposed rule text is based on IEX Rule 11.510(c)(3)(B), which provides that IEX communications with the SIP to disseminate quotation and last sale information do not traverse the IEX POP. The Exchange's proposal not to apply the Delay Mechanism to outbound communications to the plan processors would therefore have the same effect as how IEX operates.

The Exchange proposes an additional difference between its proposed Delay Mechanism and the IEX POP. As set forth in Supplementary Material .10 [sic] to IEX Rule 11.510, IEX would not apply the IEX POP when trading out of its back up system because it does not offer connectivity from the IEX POP to its back up systems. By contrast, the Exchange proposes that the Delay Mechanism would be functional regardless of whether the Exchange is operating out of its primary or secondary data center.

* * * * *

Subject to rule approvals, the Exchange will announce the implementation of the Delay Mechanism by Trader Update, which may be after the Exchange transitions to Pillar.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules to add the proposed Delay Mechanism would remove impediments to and perfect the mechanism of a free and open market because it would apply a similar delay to order message processing as the Commission has recently approved for IEX, with differences only with respect to how the Delay Mechanism would function for orders that route to an Away Market.[16] The Exchange further believes that the proposed Delay Mechanism is not unfairly discriminatory because it would be applied uniformly to all Exchange ETP Holders and may not be bypassed for a fee or otherwise.

The Exchange further believes that the proposed Delay Mechanism would remove impediments to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest because it would provide a choice of exchanges for market participants that prefer to trade or list on an exchange that offers a delay mechanism.

The Exchange also believes that the proposed Delay Mechanism, as it would apply to orders that are routed to Away Markets, would remove impediments to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest because it is designed in a manner that would enable ETP Holders that would prefer to route unexecuted quantities of orders to Away Markets, rather than having the Exchange route to Away Markets, to operate on a level playing field. As such, this aspect of the proposed Delay Mechanism is not unfairly discriminatory and would not impose a burden on competition because the Exchange's outbound router would not have unique access or preferences with respect to orders routed to Away Markets. As such, the Exchange's outbound router functionality would be on substantively comparable terms to a third party routing broker that is a member of the Exchange.

In addition, the Exchange believes that the proposed Delay Mechanism is consistent with the Commission's recent interpretation of Rule 611 of Regulation NMS.[17] The Commission has interpreted the term ''immediate'' when determining whether a trading center maintains an ''automated quotation'' for purposes of Rule 611 to include response time delays at trading centers that are *de minimis,* whether intentional or not. As such, a trading center may implement an intentional access delay that is *de minimis, i.e.,* a delay so short so as not to frustrate the purposes of Rule 611 of Regulation NMS by impairing fair and efficient access to an exchange's quotations. In the context of IEX, the Commission has already found that an intentional delay of 350 microseconds is *de minimis.*[18] Accordingly, the Exchange believes that its proposed Delay Mechanism, which would provide for the same delay period as the IEX POP under the same circumstances, is similarly *de minimis* for purposes of the Rule 611 Interpretation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to provide a competitive trading model to IEX. For this reason, the Exchange has proposed a Delay Mechanism that would function similarly to the IEX POP, with the exception of how the Delay Mechanism would be applied to routable orders. The Exchange believes that its proposed application of the Delay Mechanism to routable orders would not impose a burden on competition because it is designed in a manner that would enable ETP Holders that would prefer to route unexecuted quantities of orders to Away Markets, rather than having the Exchange route to Away Markets, to operate on a level playing field. The Exchange's proposal is therefore designed to promote competition by offering a choice of exchanges to those ETP Holders and issuers that prefer to trade or list on an exchange that offers a delay mechanism. Accordingly, the proposed rule change is designed to introduce additional competition among exchanges so that broker dealers and issuers have more than one option if seeking a trading venue that offers an intentional delay mechanism.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141, 41155 (June 23, 2016) (''IEX Approval Order'').

[17] *See* Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016) (File No. S7–03–16) (''Rule 611 Interpretation'').

[18] *See* IEX Approval Order, *supra* note 16.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2017–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2017–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–05 and should be submitted on or before March 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02994 Filed 2–14–17; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17d–1; SEC File No. 270–505, OMB Control No. 3235–0562.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the ''Act'') prohibits first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d–1 (17 CFR 270.17d–1) prohibits an affiliated person of or principal underwriter for any fund (a ''first-tier affiliate''), or any affiliated person of such person or underwriter (a ''second-tier affiliate''), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement ''an application regarding [the transaction] has been filed with the Commission and has been granted by an order.'' In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d–1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with ''portfolio affiliates'' (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (*e.g.,* the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a ''financial interest'' in a party to the transaction. The rule excludes from the definition of ''financial interest'' any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d–1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or arrangements involving first- or second-tier affiliates. Second, rule 17d–1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d–1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 18 funds file applications under section 17(d) and rule 17d–1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The Commission staff estimates that each

applicant will spend an average of 154 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d–1's application process to be 2772 hours at a cost of $1,113,228.[1] The Commission, therefore, requests authorization to increase the inventory of total burden hours per year for all funds under rule 17d–1 from the current authorized burden of 2002 hours to 2772 hours. The increase is due to an increase in the number of funds that filed applications for exemptions under rule 17d–1.

As noted above, the Commission staff understands that funds that file an application under rule 17d–1 generally use outside counsel to assist in preparing the application. The staff estimates that, on average, funds spend an additional $93,131 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 17d–1 is $1,676,35.[2]

We estimate that funds currently do not rely on the exemption from the term ''financial interest'' with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no transactions under rule 17d–1 that will result in this aspect of the collection of information.

Based on these calculations, the total annual hour burden is estimated to be 2772 hours and the total annual cost burden is estimated to be $1,676,358.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with these collections of information requirement is necessary to obtain the benefit of relying on rule 17d–1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 8, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02976 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission staff estimates that a senior executive, such as the fund's chief compliance officer, will spend an average of 62 hours and a mid-level compliance attorney will spend an average of 92 hours to comply with this collection of information: 62 hours + 92 hours = 154 hours. 18 funds × 154 burden hours = 2772 burden hours. The Commission staff estimate that the chief compliance officer is paid $493 per hour and the compliance attorney is paid $340 per hour. ($493 per hour × 62 hours) + ($340 per hour × 92 hours) = $61,846 per fund. $61,846 × 18 funds = $1,113,228. The $493 and $340 per hour figures are based on salary information compiled by SIFMA's *Management & Professional Earnings in the Securities Industry, 2013.* The Commission staff has modified SIFMA's information to account for an 1800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[2] The estimate is based on the following calculation: $93,131 × 18 funds = $1,676,358.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form BD–N/Rule 15b11–1; SEC File No. 270–498, OMB Control No. 3235–0556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15b11–1 (17 CFR 240.15b11–1) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) and Form BD–N (17 CFR 249.501b).

Rule 15b11–1 provides that a broker or dealer may register by notice pursuant to section 15(b)(11)(A) of the Exchange Act (15 U.S.C. 78*o*(b)(11)(A)) if it: (1) Is registered with the Commodity Futures Trading Commission as a futures commission merchant or an introducing broker, as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, *et seq.*); (2) is a member of the National Futures Association or another national securities association registered under section 15A(k) of the Exchange Act (15 U.S.C. 78*o*–3(k)); and (3) is not required to register as a broker or dealer in connection with transactions in securities other than security futures products. The rule also requires a broker or dealer registering by notice to do so by filing Form BD–N in accordance with the instructions to the form. In addition, the rule provides that if the information provided by filing the form is or becomes inaccurate for any reason, the broker or dealer shall promptly file an amendment on the form correcting such information.

The Commission staff estimates that the total annual reporting burden associated with Rule 15b11–1 and Form BD–N is approximately three hours, based on an average of two initial notice registrations per year that each take approximately 30 minutes to complete, for one hour, plus an average of nine amendments per year that each take approximately fifteen minutes to complete, for 2.25 hours, rounded down to two hours, for a total of three hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 8, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02975 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32474; File No. 812–14693]

USAA Asset Management Company, et al.; Notice of Application

February 9, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act, and unit investment trusts (collectively, ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: USAA Mutual Funds Trust (the ''Mutual Funds Trust''), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series; USAA ETF Trust (the ''ETF Trust''), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series (together, the Mutual Funds Trust and the ETF Trust, the ''Trusts,'' and individually each a ''Trust''); USAA Asset Management Company (''USAA AMC''), a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940; and USAA Investment Management Company, a Delaware corporation registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on August 18, 2016 and amended on January 27, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 6, 2017 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 9800 Fredericksburg Road, San Antonio, Texas 78288–0227.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819 or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) a Fund [1] (each a ''Fund of Funds'') to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies or series thereof, their principal underwriters and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[4] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered

[1] Applicants request that the order apply to each existing and future series of the Trusts and to each existing and future registered open-end investment company or series thereof that is advised by USAA AMC or its successors or by any other investment adviser controlling, controlled by, or under common control with USAA AMC or its successors and is part of the same ''group of investment companies'' as the Trusts (each, a ''Fund''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the requested order, unless otherwise noted in the application, the term ''group of investment companies'' means any two or more investment companies, that are either registered investment companies, including closed-end investment companies, or business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Funds and Underlying Funds have obtained or may obtain exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (''ETFs'').

[3] Applicants represent that a Funds of Funds will not invest in reliance on the order in business development companies or closed-end investment companies that are not listed and traded on a national securities exchange.

[4] A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from section 17(a) to permit a Fund of Funds to purchase or redeem shares from the ETF. A Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to transactions in shares of closed-end funds (including business development companies).

investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02973 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80004; File No. SR–FINRA–2016–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change To Amend FINRA Rules To Conform to the Commission's Proposed Amendment to Commission Rule 15c6–1(a) and the Industry-Led Initiative To Shorten the Standard Settlement Cycle for Most Broker-Dealer Transactions From T+3 to T+2

February 9, 2017.

I. Introduction

On December 14, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to conform its rules to an amendment proposed by the Commission to Rule 15c6–1(a) under the Act to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date (''T+3'') to two business days after the trade date (''T+2'').[3] The proposed rule change was published for comment in the **Federal Register** on December 28, 2016.[4] The Commission received three comment letters on the proposed rule change.[5] This order approves the proposed rule change.

II. Description of the Proposal

FINRA is proposing to amend FINRA Rules 2341 (Investment Company Securities), 11140 (Transactions in Securities ''Ex-Dividend,'' ''Ex-Rights'' or ''Ex-Warrants''), 11150 (Transactions ''Ex-Interest'' in Bonds Which Are Dealt in ''Flat''), 11210 (Sent by Each Party), 11320 (Dates of Delivery), 11620 (Computation of Interest), 11810 (Buy-In Procedures and Requirements), and 11860 (COD Orders), to conform to the Commission's proposed amendment to Rule 15c6–1(a) under the Act that would shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2.

FINRA Rule 2341(m) requires members, including underwriters, that engage in direct retail transactions for investment company shares to transmit payments received from customers for the purchase of investment company shares to the payee by the end of the third business day after receipt of a customer's order to purchase the shares, or by the end of one business day after receipt of a customer's payment for the shares, whichever is later. FINRA is proposing to amend Rule 2341(m) to change the three-business day transmittal requirement to two business days, while retaining the one-business day alternative.

FINRA Rule 11140(b)(1) concerns the determination of normal ex-dividend and ex-warrants dates for certain types of dividends and distributions. Currently, with respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security, if the definitive information is received sufficiently in advance of the record date, the date designated as the ''ex-dividend date'' is the second business day preceding the record date if the record date falls on a business day, or the third business day preceding the record date if the record date falls on a day designated by FINRA's UPC Committee as a non-delivery day. Under the proposal, the ''ex-dividend date'' would be the first business day preceding the record date if the record date falls on a business day, or the second business day preceding the record date if the record date falls on a day designated by FINRA's UPC Committee as a non-delivery date.

FINRA Rule 11150(a) concerns the determination of normal ex-interest dates for certain types of transactions. Currently, all transactions, except ''cash'' transactions, in bonds or similar evidences of indebtedness which are traded ''flat'' are ''ex-interest'' on the second business day preceding the record date if the record date falls on a business day, on the third business day preceding the record date if the record date falls on a day other than a business day, and on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. Under the proposal, these transactions would be ''ex-interest'' on the first business day preceding the record date if the record date falls on a business day, on the second business day preceding the record date if the record date falls on a day other than a business day, and on the second business day preceding the date on which an interest payment is to be made if no record date has been fixed.

FINRA Rules 11210(c) and (d) set forth ''DK'' procedures using ''Don't Know Notices'' and other forms of notices, respectively.[6] FINRA Rule 11210(c) currently provides that, when a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK from the contra-member by the close of four business days following the trade date of the transaction, the party may use the procedures set forth in the rule. FINRA proposes to shorten the ''four business days'' time period to one business day. FINRA Rule 11210(c)(2)(A) currently provides that a contra-member has four business days after the ''Don't Know Notice'' is received to either confirm or DK the transaction in accordance with FINRA Rule 11210(c)(2)(B) or (C). FINRA proposes to shorten the ''four business days'' time period to two business days.[7] FINRA Rule 11210(c)(3) currently provides that if the confirming member does not receive a response from the contra-member by the close of four business days after receipt by the confirming member the fourth copy of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78962 (Sep. 28, 2016), 81 FR 69240 (Oct. 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16) (T+2 Proposing Release'').

[4] *See* Securities Exchange Act Release No. 79648 (Dec. 21, 2016), 81 FR 95705.

[5] *See* Letters to Brent J. Fields, Secretary, Commission from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (''BDA''), dated Jan. 18, 2017 (''BDA Letter''), Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated Jan. 19, 2017, and Thomas F. Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association (''SIFMA''), dated Jan. 19, 2017 (''SIFMA Letter '').

[6] FINRA Rule 11210 does not apply to transactions that clear through the National Securities Clearing Corporation or other clearing organizations registered under the Act. *See* FINRA Rule 11210(a)(4).

[7] FINRA also proposes to make non-substantive, formatting changes to cross-references to reflect FINRA Manual style convention.

the ''Don't Know Notice'' if delivered by messenger, or the post office receipt if delivered by mail, such shall constitute a DK and the confirming member shall have no further liability for the trade. FINRA proposes to shorten the ''four business days'' time period to two business days.

FINRA proposes similar changes to FINRA Rule 11210(d). FINRA Rule 11210(d) currently provides that, when a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK from the contra-member by the close of four business days following the date of the transaction, the party may use the procedures set forth in the rule. FINRA proposes to shorten the ''four business days'' time period to one business day. FINRA Rule 11210(d)(5) currently provides that if the confirming member does not receive a response in the form of a notice from the contra-member by the close of four business days after receipt of the confirming member's notice, such shall constitute a DK and the confirming member shall have no further liability. FINRA proposes to shorten the ''four business days'' time period to two business days.

FINRA Rule 11320 prescribes delivery dates for various types of transactions. FINRA Rule 11320(b) currently provides that in connection with a transaction ''regular way,'' delivery is made at the office of the purchaser on, but not before, the third business day following the date of the transaction. Under the proposal, delivery would be required to be made on, but not before, the second business day following the date of the transaction. FINRA Rule 11320(c) currently provides in part that, in connection with a transaction ''seller's option,'' delivery may be made by the seller on any business day after the third business day following the date of transaction and prior to the expiration of the option, provided the seller delivers at the office of the purchaser, on a business day preceding the day of delivery, written notice of intention to deliver. Under the proposal, delivery may be made by the seller on any business day after the second business day following the date of the transaction and prior to expiration of the option.

FINRA Rule 11620 governs the computation of interest. FINRA Rule 11620(a) currently provides in part that, in the settlement of contracts in interest-paying securities other than for ''cash,'' there shall be added to the dollar price interest at the rate specified in the security, which shall be computed up to but not including the third business day following the date of the transaction. Under the proposal, the interest would be computed up to but not including the second business day following the date of the transaction.[8]

FINRA 11810(j)(1)(A) sets forth the circumstances under which a receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in FINRA 11810(b)–(h). Currently, when the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the notice must be issued using written or comparable electronic media having immediate receipt capabilities ''no later than one business day prior to the latest time and the date of the offer or other event'' in order to obtain the protection provided by the rule. Under the proposal, the notice must be ''sent as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event'' in order to obtain the protection provided by the rule.

FINRA Rule 11860(a) concerns various procedures regarding collect on delivery (''COD'') or payment on delivery orders. FINRA is proposing to amend Rule 11860(a)(4)(A) to provide that the time period for a customer buying COD to furnish instructions to the agent will be no later than the close of business on the first business day after the date of execution of the trade, rather than the close of business on the second business day.

FINRA represents that it will announce the effective date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+2 standard settlement, and the effective date of the Commission's proposed amendment to Rule 15c6–1(a) under the Act.[9]

III. Discussion and Commission's Findings

After careful review of the proposed rule change and the comments, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[10] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] which requires that the rules of a national securities association be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. As noted above, the Commission received three comment letters on the proposed rule change.[12] All comment letters express support for Commission approval of the proposed rule change.[13]

The Commission notes that the proposal would amend FINRA rules to conform to the amendment that the Commission has proposed to Rule 15c6–1(a) under the Act[14] and support a move to a T+2 standard settlement cycle. In the T+2 Proposing Release the Commission stated its preliminary belief that shortening the standard settlement cycle from T+3 to T+2 will result in a reduction of credit, market, and liquidity risk,[15] and as a result a reduction in systemic risk for U.S. market participants.[16] The Commission also notes that it has not yet adopted the proposed amendment to Rule 15c6–1(a),

[8] FINRA also proposes to capitalize certain words in the title of FINRA Rule 11620(a).

[9] *See supra* note 3.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–3(b)(6).

[12] *See supra* note 5.

[13] One of the commenters requests guidance from FINRA with respect to FINRA Rule 11210(c) to permit the use of electronic means to communicate DK notices. The commenter notes that, currently, FINRA Rule 11210(c)(1) requires that such notices be sent ''by certified mail, return receipt requested, or messenger.'' *See* SIFMA Letter, at 3. The Commission notes that this request is beyond the scope of the current proposed rule change. However, the Commission notes that FINRA could work with the commenter and other market participants to determine whether changes to the communication methods specified in FINRA Rule 11210(c) would be appropriate. One commenter expressed concern with how the proposed amendments to Rule 15c6–1(a) may affect Reg. T. The Commission notes that this comment pertains to the Commission's proposed rule and not directly to the proposal. *See* BDA Letter.

[14] *See supra* note 3.

[15] Credit risk refers to the risk that the credit quality of one party to a transaction will deteriorate to the extent that it is unable to fulfill its obligations to its counterparty on settlement date. Market risk refers to the risk that the value of securities bought and sold will change between trade execution and settlement such that the completion of the trade would result in a financial loss. Liquidity risk describes the risk that an entity will be unable to meet financial obligations on time due to an inability to deliver funds or securities in the form required though it may possess sufficient financial resources in other forms. *See* T+2 Proposing Release, *supra* note 3, 81 FR at 69241 n. 3.

[16] *See id.*, 81 FR at 69241.

and that FINRA has, accordingly, not proposed to make its amended rules effective at present. Instead, FINRA has proposed to announce the effective date of the proposed rule change in an Equity Regulatory Alert. The Commission expects that the effective date of the proposed rule change would correspond with the compliance date of any amendment to Rule 15c6–1(a) under the Act that is adopted by the Commission. The Commission notes that, in October 2014, Depository Trust and Clearing Corporation (''DTCC''), in collaboration with the Investment Company Institute, SIFMA, and other market participants, formed an Industry Steering Group (''ISC'') and an industry working group to facilitate the transition to a T+2 settlement cycle for U.S. trades in equities, corporate and municipal bonds, and unit investment trusts.[17] The ISC has identified September 5, 2017, as the target date for the transition to a T+2 settlement cycle to occur.[18]

For the reasons noted above, the Commission finds that the proposal is consistent with the requirements of the Act and would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2016–047), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02998 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* Press Release, DTCC, Industry Steering Committee and Working Group Formed to Drive Implementation of T+2 in the U.S. (Oct. 2014), *http://www.dtcc.com/news/2014/october/16/ust2.aspx.*

[18] *See* Press Release, ISC, US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017 (Mar. 7, 2016), *http://www.ust2.com/pdfs/T2-ISC-recommends-shorter-settlement-030716.pdf.*

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79994; File No. SR–ISE–2016–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Exchange's Rules Regarding Routing of Orders, Cancellation of Orders, and Handling of Error Positions, and Permit Nasdaq Execution Services, LLC To Become an Affiliated Member of the Exchange To Perform Certain Routing and Other Functions

February 9, 2017.

I. Introduction

On December 9, 2016, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change related to the routing of orders, cancellation of orders, and handling of error positions. The proposed rule change would also permit Nasdaq Execution Services, LLC (''NES'') to become an affiliated Member [3] of the Exchange to perform certain routing and other functions. On December 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 29, 2016.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Background

On June 21, 2016, the Commission approved a proposed rule change relating to a corporate transaction in which Nasdaq, Inc. would become the ultimate parent of ISE, ISE Gemini, LLC (''ISE Gemini''), and ISE Mercury, LLC (''ISE Mercury'' and, together with ISE and ISE Gemini, the ''ISE Exchanges'').[5] The transaction closed on June 30, 2016.[6] Nasdaq, Inc. is also the ultimate parent of NASDAQ BX, Inc. (''BX''), The NASDAQ Stock Market LLC (''Nasdaq''), and NASDAQ PHLX LLC (''Phlx'' and, together with Nasdaq and BX, the ''Nasdaq Exchanges'').[7] Nasdaq, Inc. is also the ultimate parent of NES,[8] a broker-dealer that is a member, and affiliate, of each of the Nasdaq Exchanges.[9] As a result of this transaction, the ISE Exchanges and the Nasdaq Exchanges became affiliates,[10] and NES became an affiliate of the ISE Exchanges.[11]

The Exchange has now proposed a rule change to amend its rules relating to order routing, cancellation of orders, and handling of error positions, and to permit NES to become a Member of the Exchange to perform certain routing and other functions. ISE's proposed rules are similar to rules of Phlx,[12] as well as the other Nasdaq Exchanges.[13] Specifically, and as described in more detail below, the Exchange proposed to: (1) Route outbound orders in options listed and open for trading on the Exchange's system to away markets through NES, either directly or through a third-party routing broker-dealer; (2) permit the Exchange to receive inbound orders in options routed through NES from the Affiliated Exchanges, pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Member'' is an organization that has been approved to exercise certain trading rights on the Exchange. *See* ISE Rule 100(a)(23).

[4] *See* Securities Exchange Act Release No. 79665 (December 22, 2016), 81 FR 96092 (''ISE Notice'').

[5] *See* Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11; SR–ISE Gemini–2016–05; SR–ISE Mercury–2016–10) (order approving Nasdaq, Inc.'s acquisition of ISE, ISE Gemini, and ISE Mercury) (''Nasdaq Acquisition Order'').

[6] *See http://ir.nasdaq.com/releasedetail.cfm?releaseid=977785* (Nasdaq press release announcing completion of its acquisition).

[7] *See* Nasdaq Acquisition Order, *supra* note 5, at 41611.

[8] *See* Securities Exchange Act Release No. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028) (order approving a proposed rule change to make permanent a pilot program to permit Nasdaq to accept inbound orders routed by NES from the BX Equities market and PSX) at 19352 n.6 and accompanying text (''BX Equity Routing Approval''). *See also* ISE Notice, *supra* note 4, at 96093.

[9] *See* Securities Exchange Act Release Nos. 79661 (December 22, 2016), 81 FR 96100 (December 29, 2016) (SR–BX–2016–068) at 96100; 79662 (December 22, 2016), 81 FR 96087 (December 29, 2016) (SR–NASDAQ–2016–169) at 96087; and 79660 (December 22, 2016), 81 FR 96060 (December 29, 2016) (SR–Phlx–2016–120) at 96061. *See also* ISE Notice, *supra* note 4, at 96093.

[10] *See* Nasdaq Acquisition Order, *supra* note 5, at 41611 n.8. The Nasdaq Exchanges, together with ISE Gemini and ISE Mercury, are referred to herein as ISE's ''Affiliated Exchanges.''

[11] *See generally* ISE Notice, *supra* note 4, at 96093 (discussing that NES is a broker-dealer owned and operated by Nasdaq, Inc. and affiliated with ISE and the Affiliated Exchanges).

[12] *See* ISE Notice, *supra* note 4, at 96093, 96094–96096. *See also* Phlx Rules 985(c)(2), 1080(m)(ii), (iii), and (v).

[13] *See* Nasdaq Rule 2160(c) and Nasdaq Options Rules, Chapter VI, Section 11(d)–(g); and BX Rule 2140(c) and BX Options Rules, Chapter VI, Section 11(d)–(g).

certain limitations and conditions; (3) adopt rules regarding the cancellation of orders and the handling of certain error positions, including maintenance by NES of an error account; and (4) make related conforming changes.[14] In addition, the Exchange requested that the Commission approve its proposal to permit NES to become a Member of the Exchange, as required by ISE Rule 312,[15] to perform certain functions relating to the outbound routing of orders to away markets, routing orders inbound from the Affiliated Exchanges, cancellation of orders, and the maintenance of an error account.

III. Discussion and Commission Findings

After careful review, the Commission finds, as discussed in more detail below, that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(1) of the Act,[17] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purpose of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

A. Restriction on Affiliation

As noted above, ISE proposed that NES be permitted to become a Member of the Exchange to perform certain routing and other functions, as described in more detail below.[19] Absent Commission approval, ISE Rule 312 would prohibit NES from becoming a Member of ISE because of its affiliation with the Exchange and its affiliation with affiliates of the Exchange. Specifically, pursuant to ISE Rule 312, without prior Commission approval, a Member of the Exchange ''shall not be or become an affiliate of the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated.'' [20]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, the Commission believes that it is consistent with the Act, as discussed in more detail below, to permit NES, an affiliate of the Exchange, to be a Member of the Exchange to perform each of the proposed functions, subject to the proposed limitations and conditions. The Commission also believes that the proposed limitations and conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage,[22] and that the Exchange's proposed rules are designed to ensure that NES cannot use any information advantage it may have because of its affiliation with ISE.[23]

B. Outbound Routing

ISE has proposed to establish NES as the Exchange's exclusive order router.[24] Currently, ISE utilizes Linkage Handlers [25] unaffiliated with the Exchange to route outbound orders.[26] ISE has proposed to amend ISE Rule 1903 to provide that ISE will no longer use Linkage Handlers and instead, NES will route orders to other options exchanges, either directly, or indirectly through unaffiliated third-party routing brokers, on behalf of ISE.[27] ISE explained that the Exchange will have the option to direct NES to route orders

[14] *See* ISE Notice, *supra* note 4, at 96093.

[15] *Id.*

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(1).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* ISE Notice, *supra* note 4, at 96093. *See also infra,* Sections III.B–D.

[20] *See* ISE Rule 312. *See also* ISE Notice, *supra* note 4, at 96093.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] *See infra* note 59 and accompanying text and Section III.D.

[23] *See infra* note 60 and accompanying text. The Commission also notes that the functions to be performed by NES for ISE, as well as the related limitations and conditions, are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving rules relating to the establishment of the BX options market, including the use of an affiliated member for outbound and inbound routing of options orders) at 39280–82; and 67280 (June 27, 2012), 77 FR 39552 (July 3, 2012) (SR–BX–2012–034) (order approving a proposed rule change with respect to the authority of the BX or NES to cancel orders when a technical or systems issue occurs and the operation of an error account); and BX Equity Routing Approval, *supra* note 8.

[24] *See* proposed ISE Rule 1903(a).

[25] A ''Linkage Handler'' is a broker that is unaffiliated with the Exchange with which the Exchange has contracted to provide Routing Services, as that term is defined in ISE Rule 1903, by routing ISO(s) to other exchange(s) as an agent on behalf of Public Customer and Non-Customer Orders according to the requirements of Rule 1901 (prohibition on trade-throughs) and Rule 1902 (prohibition on locked and crossed markets). *See* ISE Rule 1901, Supplementary Material .03. ISE Rules 100(a)(28) and (39) define ''Non-Customer Order'' and ''Public Customer Order,'' respectively.

[26] *See* ISE Rule 1903(a).

[27] *See* proposed ISE Rule 1903(a). ISE has proposed to retain the first portion of ISE Rule 1903, which provides that the Exchange may automatically route ISOs to other exchanges under certain circumstances, including pursuant to Supplementary Material .02 to Rule 1901, which discusses the handling of orders when the automatic execution of an incoming order would result in an impermissible trade through. *See* proposed ISE Rule 1903. ISE noted that this provision provides context to the proposed rule and is consistent with the practice on Phlx, even though it is not contained in Phlx's comparable rule. *See* ISE Notice, *supra* note 4, at 96094. ISE has proposed to remove from this provision a reference to Supplementary Material .03 to Rule 1901, which defines Linkage Handlers. *See* proposed ISE Rule 1903.

to certain exchanges through a third-party routing broker, in which case NES will submit the orders to the third-party routing broker and the third-party routing broker will route the orders in the third-party routing broker's name.[28] ISE noted that its proposed use of NES to handle outbound routing for the Exchange is similar to the arrangement utilized by Phlx.[29]

Pursuant to the proposal, NES will serve as the routing facility of the Exchange (''Routing Facility). The sole use of the Routing Facility by the system will be to route orders in options listed and open for trading on the system to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to Exchange rules on behalf of the Exchange. The Routing Facility will be subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Act, as amended.[30]

NES will be a member of an SRO unaffiliated with ISE that is its designated examining authority.[31] Also, the Exchange and NES will not be permitted to use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.[32] The use of NES to route orders to other market centers will be optional.[33] Parties that do not desire to use NES will need to designate orders as Do-No-Route-Orders pursuant to ISE Rule 715(m).[34]

The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker.[35] The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, will be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Act. Also, the books and records of the Routing Facility, as a facility of the Exchange, will be subject at all times to inspection and copying by the Exchange and the Commission.[36]

The Exchange will determine the logic that provides when, how, and where orders are routed to other exchanges. Except as provided, the routing broker(s) will not be able to change the terms of an order or the routing instructions, nor will the routing broker have any discretion about where to route an order.[37] ISE explained that it may choose to use a different routing broker by destination exchange, depending upon the costs and technological efficiencies involved.[38] ISE stated that, at a minimum, it anticipates using a third-party routing broker to access certain markets where the costs of maintaining a membership for NES or the costs of connectivity and execution do not make sense based on the number or types of orders that the Exchange typically routes to a particular market. ISE added that it will also consider the ease of connectivity and execution and general reliability when selecting a third-party routing broker.[39] Entering Members whose orders are routed to away markets will be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.[40]

In addition to the Exchange rules regarding routing away to trading centers, NES will, pursuant to Rule 15c3–5 under the Act, implement certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies and procedures developed by NES to comply with Rule 15c3–5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements of Rule 15c3–5, the order will be rejected prior to routing and/or NES will seek to cancel any orders that had been routed.[41]

ISE also has proposed to make conforming changes to remove the term Linkage Handler from its rules and replace it with references to NES or third-party unaffiliated routing broker-dealers used by NES, as appropriate.[42] Further, ISE has proposed to remove ISE Rule 705(d)(4), which provides an exception to the limits on compensation in ISE Rule 705(d) for Members to the extent such Members are acting as Linkage Handlers.[43] ISE explained that, unlike NES, Linkage Handlers are not affiliated with ISE and the Exchange does not believe that such an exception to compensation limits is necessary for NES.[44]

As a facility of ISE (as defined in Section 3(a)(2)[45] of the Act), NES will be subject to Exchange oversight, as well as Commission oversight, and the Exchange will be responsible for ensuring that NES's outbound routing function is operated consistent with Section 6 of the Act and the Exchange's rules.[46] A participant in ISE's system will be free to route its orders to other market centers through alternative means. The Commission notes that ISE's proposed rules for the operation of NES as an affiliated outbound router on behalf of the Exchange are consistent with the rules and conditions approved by the Commission for other exchanges.[47] In light of the protections

[28] *See* ISE Notice, *supra* note 4, at 96094.

[29] *See id.* (citing Phlx Rule 1080(m)). The Commission notes that ISE's proposal is also similar to Nasdaq's and BX's rules. *See* Nasdaq Options Rules, Chapter VI, Section 11(d)–(f); BX Options Rules, Chapter VI, Section 11(d)–(f).

[30] *See* proposed ISE Rule 1903(a).

[31] *See id.*

[32] *See* proposed ISE Rule 1903(c)(2). ISE noted that this provision is intended to prevent any conflicts of interest that might arise if an entity with regulatory oversight of ISE was privy to trades conducted on ISE. *See* ISE Notice, *supra* note 4, at 96095.

[33] *See* proposed ISE Rule 1903(b).

[34] *See id. See also* ISE Notice, *supra* note 4, at 96095.

[35] *See* proposed ISE Rule 1903(c). If the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, this provision will apply to the flow of confidential and proprietary information between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services. *See id.*

[36] *See* proposed ISE Rule 1903(c)(1).

[37] *See* proposed ISE Rule 1903(e).

[38] For such indirect routing, ISE stated that it would route orders through NES to another routing broker where the Exchange determines that it is appropriate. *See* ISE Notice, *supra* note 4, at 96095.

[39] *See* ISE Notice, *supra* note 4, at 96095.

[40] *See* proposed ISE Rule 1903(f). ISE noted that this provision is substantively the same as its current Rule 1903(f), but it is amending the provision to conform the text to Phlx Rule 1080(m)(ii).

[41] *See* proposed ISE Rule 1903(d).

[42] *See* proposed ISE Rule 1901, Supplementary Material .02(d), .04(a), and .05(a); proposed ISE Rule 1903, Supplementary Material .01, .02, and .03. ISE has proposed to delete its definition of Linkage Handler at Rule 1901, Supplementary Material .03, and reserve this provision. *See* proposed ISE Rule 1901, Supplementary Material .03. With respect to the references to Linkage Handler in ISE Rules 1904 and 1905, as discussed further below, ISE has proposed to replace ISE Rule 1904 in its entirety and reserve ISE Rule 1905. *See* proposed ISE Rules 1904 and 1905.

[43] *See* proposed ISE Rule 705(d).

[44] *See* ISE Notice, *supra* note 4, at 96095.

[45] 15 U.S.C. 78c(a)(2).

[46] Further, the Commission notes that the Exchange will be responsible for filing with the Commission proposed rule changes and fees relating to NES's outbound routing function and NES's outbound routing function will be subject to exchange non-discrimination requirements.

[47] *See, e.g.,* Securities Exchange Act Release No. 62716, *supra* note 21 at 51303–04. The proposed rules are also consistent with the rules of the Nasdaq Exchanges. *See, e.g.,* Phlx Rule 1080(m)(ii) and (iii); Nasdaq Options Rules, Chapter VI, Section 11(d)–(f); BX Options Rules, Chapter VI, Section 11(d)–(f). *See also* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3,

Continued

discussed above, including the regulation of NES as a facility of the Exchange with respect to the routing of orders, the Commission believes that ISE's proposed rules and use of NES to route orders to away markets are consistent with the Act.

C. Inbound Routing

As discussed above, NES is currently a member of each Nasdaq Exchange. NES also operates as a facility of each of Nasdaq, Phlx, and BX that provides outbound options routing to other market centers, subject to certain conditions.[48] ISE Gemini and ISE Mercury have also proposed that NES operate as a facility of each that provides outbound options routing to other market centers, subject to similar conditions.[49] The operation of NES as a facility of each of the Affiliated Exchanges providing outbound routing services will be subject to oversight by ISE Gemini, ISE Mercury, Nasdaq, BX, and Phlx, respectively, as well as Commission oversight. Each of the Affiliated Exchanges will be responsible for ensuring that NES's outbound options routing services are operated consistent with Section 6 of the Act and with the respective Affiliated Exchange's rules. In addition, the Affiliated Exchanges must each file with the Commission rule changes and fees relating to their outbound options routing services provided by NES.

Recognizing that the Commission previously expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interest, ISE proposed the following limitations and conditions to permit the Exchange to accept inbound options orders that NES routes in its capacity as a facility of the Affiliated Exchanges: [50]

- First, ISE and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Services Agreement (''RSA''), as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[51] Pursuant to the RSA and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[52] Pursuant to the RSA, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[53]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.
- Fourth, ISE proposed to amend ISE Rule 312 to add ISE Rule 312(c), which will provide that Nasdaq, Inc., as the holding company owning both the Exchange and NES, shall establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange Members, in connection with the provision of inbound routing to the Exchange.[54]

The Commission finds that ISE's proposed rule change to permit the Exchange to accept inbound options orders routed by NES from its Affiliated Exchanges, including the related change to ISE Rule 312, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act [55] and Section 6(b)(5) of the Act.[56]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[57] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of each of the Affiliated Exchanges, to route options orders inbound to ISE, subject to the limitations and conditions described above.[58]

The Commission believes that these limitations and conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of NES,[59] combined with a non-affiliated SRO's monitoring of NES's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of ISE's regulatory responsibilities with respect to NES. The Commission also believes that the Exchange's proposed ISE Rule 312(c) is designed to ensure that NES cannot use any information advantage it may have because of its affiliation with ISE.[60]

D. Cancellation of Orders and Error Accounts

ISE has proposed to amend its rules concerning the cancellation of orders

2009) (SR–Phlx–2009–32) (order approving enhancements to Phlx's trading system, including use of outbound routing facility) at 26756–57.

[48] *See supra* note 47 (citing Phlx Rule 1080(m)(ii) and (iii); Nasdaq Options Rules, Chapter VI, Section 11(d)–(f); and BX Options Rules, Chapter VI, Section 11(d)–(f)). The Commission notes that these conditions are consistent with the conditions the Commission is approving today for ISE's operation of NES as a facility of the Exchange for outbound options routing to other market centers. *See supra* Section III.B.

[49] *See* Securities Exchange Act Release Nos. 79664 (December 22, 2016), 81 FR 96136 (December 29, 2016) (SR–ISEGemini-2016–16); and 79663 (December 22, 2016), 81 FR 96089 (December 29, 2016) (SR–ISEMercury-2016–22). The Commission is also today approving these proposed rules changes. *See* Securities Exchange Act Release No. 79995 (February 9, 2017) (''ISE Gemini and ISE Mercury Exchange Routing Order'').

[50] *See* ISE Notice, *supra* note 4, at 96093–96094.

[51] 17 CFR 240.17d–2.

[52] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[53] Pursuant to the RSA, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of each of the Affiliated Exchanges routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* ISE Notice, *supra* note 4, at 96094 n.13 and accompanying text.

[54] *See* proposed ISE Rule 312(c).

[55] 15 U.S.C. 78f(b)(1). *See also supra* note 17 and accompanying text.

[56] 15 U.S.C. 78f(b)(5). *See also supra* note 18 and accompanying text.

[57] See supra note 21 and accompanying text.

[58] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256, *supra* note 23, at 39281–82; and 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15) (order approving a proposed rule change to make permanent a pilot program to permit PSX to accept inbound orders routed by NES from BX); and BX Equity Routing Approval, *supra* note 8.

[59] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the RSA.

[60] *See supra* note 54 and accompanying text.

and error accounts. Currently, the Exchange may cancel orders as it deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a Linkage Handler in connection with the routing services provided under ISE Rule 1903, or another exchange to which an Exchange order has been routed.[61] ISE permits Linkage Handlers to maintain one or more accounts for the purpose of liquidating unmatched trade positions that may occur in connection with their routing of outbound orders.[62]

As described above, ISE will no longer utilize Linkage Handlers and will instead utilize NES as its Routing Facility to route orders to away markets either directly or through one or more third-party unaffiliated routing broker-dealers on behalf of the Exchange.[63] In its proposal, ISE stated that a technical or systems issue may occur at the Exchange, NES, or a routing destination that causes the Exchange or NES to cancel orders, if the Exchange or NES determines that such action is necessary to maintain a fair and orderly market.[64] ISE also stated that a technical or systems issue that occurs at the Exchange, NES, a routing destination, or a third-party unaffiliated routing broker may result in NES acquiring an error position that it must resolve.[65] In conjunction with the proposed changes to outbound routing described above, ISE has proposed to revise its rules concerning the cancellation of orders and handling of error positions and adopt proposed ISE Rule 1904.[66] ISE noted that proposed ISE Rule 1904 is similar to Phlx's rule on this subject.[67]

ISE has proposed to provide the Exchange or NES with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at the Exchange, NES, or a routing destination.[68] NES will maintain an error account for the purpose of addressing error positions, according to the specified procedures for resolving such error positions.[69] Specifically, the Exchange or NES will be able to cancel orders as either deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, NES, or a routing destination.[70] The Exchange or NES will be required to provide notice of the cancelation to all affected Members as soon as practicable.[71]

Pursuant to the proposal, NES will be required to maintain an error account for the purpose of addressing error positions that result from a technical or systems issue at the Exchange, NES, a routing destination, or an unaffiliated third-party routing broker.[72] For purposes of this rule, an error position will not include any position that results from an order submitted by a Member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.[73] NES will not be permitted to (i) accept any positions in its error account from a Member's account or (ii) permit any Member to transfer any positions from the Member's account to NES's error account.[74] In other words, NES may not accept from a Member positions that are delivered to the Member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at the Exchange, NES, a routing destination of NES, or an unaffiliated third-party routing broker.[75] If, however, a technical or systems issue results in the Exchange not having valid clearing instructions for a Member to a trade, NES may assume that Member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.[76]

In connection with a particular technical or systems issue, the Exchange or NES will be required to either (i) assign all resulting error positions to Members or (ii) have all resulting error positions liquidated. Any determination to assign or liquidate error positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.[77] The Exchange or NES will be required to assign all error positions resulting from a particular technical or systems issue to the Members affected by that technical or systems issue if the Exchange or NES:

(i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the Members affected by that technical or systems issue;

(ii) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the Members affected by that technical or systems issue; and

(iii) Has not determined to cancel all orders affected by that technical or systems issue in accordance with proposed ISE Rule 1904(a).[78]

If the Exchange or NES is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected Members, or if the Exchange or NES determines to cancel all orders affected by the technical or systems issue, then NES will be required to liquidate the error positions as soon as practicable.[79] NES will be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer, and would be prohibited from attempting to exercise any influence or control over the timing or methods of such trading.[80] Further, NES will be required to establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer, on one hand, and the Exchange and NES, on the other, associated with the liquidation of the

[61] *See* ISE Rule 1904. *See also* ISE Notice, *supra* note 4, at 96096.

[62] *See* ISE Rule 1905. *See also* ISE Notice, *supra* note 4, at 96096.

[63] *See supra* notes 27–28 and accompanying text.

[64] *See* ISE Notice, *supra* note 4, at 96096. For examples of some of the circumstances in which the Exchange or NES may decide to cancel orders, see *id.,* at 96096–97.

[65] *See* ISE Notice, *supra* note 4, at 96097. Specifically, proposed ISE Rule 1904(b) defines ''error positions'' as ''positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders.'' For examples of some of the circumstances that may lead to error positions, see ISE Notice, *supra* note 4, at 96097.

[66] *See* proposed ISE Rules 1904 and 1905. ISE has proposed to (i) combine its rules concerning cancellation of orders and error accounts into proposed ISE Rule 1904, which it will retitle; and (ii) remove and reserve ISE Rule 1905. *See* ISE Notice, *supra* note 4, at 96095–96.

[67] *See* ISE Notice, *supra* note 4, at 96095–96 (citing Phlx Rule 1080(m)(v)). The Commission notes that ISE's proposed rule is also similar to Nasdaq's and BX's rules. *See* Nasdaq Options Rules, Chapter VI, Section 11(g); BX Options Rules, Chapter VI, Section 11(g).

[68] *See* proposed ISE Rule 1904(a).

[69] *See* proposed ISE Rule 1904(b).

[70] *See* proposed ISE Rule 1904(a).

[71] *See id.*

[72] *See* proposed ISE Rule 1904(b).

[73] *See* proposed ISE Rule 1904(b)(1).

[74] *See* proposed ISE Rule 1904(b)(2).

[75] *See* ISE Notice, *supra* note 4, at 96097–98 n.30. This provision would not apply if NES incurred a short position to settle a Member's purchase, as the Member would not have had a position in its account as a result of the purchase at the time of NES's action. Similarly, if a systems issue occurred that caused one Member to receive an execution for which there is not an available counterparty, action by NES would be required for the positions to settle into that Member's account. *See id.*

If error positions result in connection with the Exchange's use of a third-party routing broker for outbound routing and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions. If, however, such positions were not delivered to NES through the clearance and settlement process, then the third-party routing broker would resolve the error positions itself, and NES would not be permitted to accept the positions. *See* ISE Notice, *supra* note 4, at 96096 n.23.

[76] *See* proposed ISE Rule 1904(b)(3).

[77] *See* proposed ISE Rule 1904(c).

[78] *See* proposed ISE Rule 1904(c)(A)(i)–(iii).

[79] *See* proposed ISE Rule 1904(c)(B).

[80] *See* proposed ISE Rule 1904(c)(B)(i).

error positions.[81] Also, the Exchange and NES will be required to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to Members or to liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.[82]

The Commission recognizes that technical or systems issues may occur, and believes that proposed ISE Rule 1904, in allowing the Exchange or NES to cancel orders affected by technical or systems issues, should provide a reasonably efficient means for the Exchange to handle such orders, and appears reasonably designed to permit the Exchange to maintain fair and orderly markets.[83] The Commission also believes that allowing the Exchange to resolve error positions through the use of an error account maintained by NES pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions,[84] and that the Exchange or NES, in connection with a particular technical or systems issue, will be required to either assign or liquidate all resulting error positions.[85] Also, the Exchange or NES will assign error positions that result from a particular technical or systems issue to Members only if all such error positions can be assigned to all of the Members affected by that technical or systems issue.[86] If the Exchange or NES cannot assign all error positions to all Members, NES will liquidate all of those error positions.[87] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

In addition, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.[88] The Commission has also previously expressed its concern about the potential for misuse of confidential and proprietary information.[89] The Commission believes that the requirement that NES provide complete time and price discretion for the liquidation of error positions to a third-party broker-dealer, including that NES not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that the Exchange establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party broker-dealer liquidating such positions, should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of the Exchange, NES, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that the Exchange and NES would be required to make and keep records to document all determinations concerning error positions and resulting assignments or liquidations.[90] In addition, the Commission notes that the proposed procedures for cancelling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[91]

IV. Implementation of Proposed Rule Change

ISE stated that it intends to begin implementation of the proposed rule change in the second quarter of 2017, in tandem with a technology migration to Nasdaq INET architecture, and that the migration will be on a symbol-by-symbol basis. ISE has represented that it will issue an alert to Members to announce the relevant migration date for specific symbols.[92] ISE explained that the rules in ISE Chapter 19, including ISE Rules 1901, 1903, 1904, and 1905, are incorporated by reference into the rulebooks of ISE Gemini and ISE Mercury.[93] ISE Gemini and ISE Mercury submitted proposed rule changes that, among other things, would permit ISE Gemini and ISE Mercury to each use NES to route options orders outbound to away markets, route options orders inbound from the Affiliated Exchanges, and utilize the same procedures for cancellation of orders and handling of error accounts described herein.[94] ISE stated that it intends to begin implementation of the proposed rule changes for ISE Gemini and ISE Mercury in the first quarter and third quarter of 2017, respectively, on a symbol-by-symbol basis. ISE further represented that it will add notations in each rulebook to cross-reference the amended rule text and clarify the respective implementation dates.[95]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[96] that the proposed rule change (SR–ISE–2016–27), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[97]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02991 Filed 2–14–17; 8:45 am]

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[81] *See* proposed ISE Rule 1904(c)(B)(ii).

[82] *See* proposed ISE Rule 1904(d).

[83] The Commission notes that ISE stated that the proposed amendments to ISE Rule 1904 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* ISE Notice, *supra* note 4, at 96099. The Commission also notes that ISE stated that a decision to cancel orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to ISE Rule 1901(b)(1)(i). *See id.* at 96097 n.29.

[84] *See* proposed ISE Rule 1904(b).

[85] *See* proposed ISE Rule 1904(c).

[86] *See* proposed ISE Rule 1904(c)(A).

[87] *See* proposed ISE Rule 1904(c)(B).

[88] *See supra* notes 21 and 57 and accompanying text.

[89] *See, e.g.,* Securities Exchange Act Release No. 67280, *supra* note 23, at 39554.

[90] *See* proposed ISE Rule 1904(d).

[91] *See, e.g.,* Securities Exchange Act Release Nos. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09); and 67280, *supra* note 23. The Commission also notes that ISE's proposed rule is consistent with the corresponding rules of the Nasdaq Exchanges. *See* Phlx Rule 1080(m)(v); Nasdaq Options Rules, Chapter VI, Section 11(g); BX Options Rules, Chapter VI, Section 11(g).

[92] *See* ISE Notice, *supra* note 4, at 96098.

[93] *See id.*

[94] *See* Securities Exchange Act Release Nos. 79664, *supra* note 49; and 79663, *supra* note 49. The Commission is also today approving these proposed rule changes. *See* ISE Gemini and ISE Mercury Exchange Routing Order, *supra* note 49.

[95] *See* ISE Notice, *supra* note 4, at 96098.

[96] 15 U.S.C. 78s(b)(2).

[97] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission; Office of FOIA Services; 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17a–10; SEC File No. 270–507, OMB Control No. 3235–0563.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 17(a) of the Investment Company Act of 1940 (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers.[2] Rule 17a–10 (17 CFR 270.17a–10) permits (i) a subadviser [3] of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.[4] Section 17(a) of the Investment Company Act of 1940 (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers. Rule 17a–10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio. This requirement regarding the prohibitions and limitations in advisory contracts of subadvisors relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').[5]

The staff assumes that all existing funds with subadvisory contracts amended those contracts to comply with the adoption of rule 17a–10 in 2003, which conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[6] However, the staff assumes that all newly formed subadvised funds, and funds that enter into new contracts with subadvisers, will incur the one-time burden by amending their contracts to add the terms required by the rule.

Based on an analysis of fund filings, the staff estimates that approximately 319 funds enter into new subadvisory agreements each year.[7] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 12d3–1, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a–10 for this contract change would be 0.75 hours.[8] Assuming that all 319 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 239 burden hours annually, with an associated cost of approximately $90,820.[9]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–10. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549

[1] 15 U.S.C. 80a–17(a).

[2] 15 U.S.C. 80a–2(a)(3)(E).

[3] As defined in rule 17a–10(b)(2). 17 CFR 270.17a–10(b)(2).

[4] 17 CFR 270.17a–10(a)(2).

[5] 44 U.S.C. 3501.

[6] Transactions of Investment Companies With Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153, (Jan. 22, 2003)]. We assume that funds formed after 2003 that intended to rely on rule 17a–10 would have included the required provision as a standard element in their initial subadvisory contracts.

[7] Based on data from Morningstar, as of June 2016, there are 12,485 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,629 funds of which have subadvisory relationships (approximately 37%). Based on data from the 2016 ICI Factbook, 862 new funds were established in 2015 (594 open-end funds + 258 exchange-traded funds + 10 closed-end funds (from the ICI Research Perspective, April 2016)). 862 new funds × 37% = 319 funds.

[8] This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

[9] These estimates are based on the following calculations: (0.75 hours × 319 portfolios = 239 burden hours); ($380 per hour × 239 hours = $90,820 total cost). The Commission's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys, modified to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $380. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 8, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02974 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79996; File Nos. SR–BX–2016–068; SR–NASDAQ–2016–169; SR–Phlx–2016–120]

Self-Regulatory Organizations; NASDAQ BX, Inc.; The Nasdaq Stock Market LLC; NASDAQ PHLX LLC; Order Granting Approval of Proposed Rule Changes, as Modified by Amendment No. 1s, To Accept Orders Routed Inbound From the International Stock Exchange, LLC, ISE Gemini, LLC, and ISE Mercury, LLC, by Nasdaq Execution Services, LLC

February 9, 2017.

I. Introduction

On December 9, 2016, NASDAQ BX, Inc. (''BX''), The NASDAQ Stock Market LLC (''Nasdaq''), and NASDAQ PHLX LLC (''Phlx'' and, each of BX, Nasdaq, and Phlx a ''NASDAQ Exchange'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to permit BX, Phlx, and The NASDAQ Options Market LLC (''NOM'') [3] to accept options orders routed inbound from the International Stock Exchange, LLC (''ISE''), ISE Gemini, LLC (''ISE Gemini''), and ISE Mercury, LLC (''ISE Mercury'' and, together with ISE and ISE Gemini, the ''ISE Exchanges'') by Nasdaq Execution Services, LLC (''NES''), an affiliate of both the NASDAQ Exchanges and the ISE Exchanges (the NASDAQ Exchanges, together with the ISE Exchanges, the ''Affiliated Exchanges'').[4] On December 20, 2016, each of the NASDAQ Exchanges filed an Amendment No. 1 to its respective proposed rule change. The proposed rule changes, each as modified by Amendment No. 1 thereto, were published for comment in the **Federal Register** on December 29, 2016.[5] The Commission received no comments on the proposals. This order approves the proposed rule changes, as modified by their respective Amendment No. 1s.

II. Background

Phlx Rule 985(b)(i)(A) prohibits Phlx or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[6] Nasdaq's and BX's rules include similar prohibitions.[7] NES is a registered broker-dealer that is a member of NOM,[8] BX,[9] and Phlx,[10] and currently provides to members of each, optional routing services to other markets.[11] NES is owned by Nasdaq, Inc.,[12] which also owns all of the Affiliated Exchanges.[13] Thus, NES is an affiliate of the NASDAQ Exchanges, as well as an affiliate of the ISE Exchanges. Absent an effective filing, the rules of Nasdaq, BX, and Phlx would prohibit NES from being a member of each of those Exchanges. Today, NES is a member of each of the NASDAQ Exchanges and performs certain limited activities for each, pursuant to effective filings pursuant to Section 19(b).[14] Among other activities, each of the NASDAQ Exchanges accepts options orders routed inbound from each of the other NASDAQ Exchanges pursuant to certain limitations and conditions.[15] With the current proposed rule changes, the NASDAQ Exchanges seek approval to permit NES to also route options orders inbound from the ISE Exchanges pursuant to those same limitations and conditions.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, each as modified by Amendment No. 1,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NOM is a facility of Nasdaq. *See* Nasdaq Options Rules, Chapter I, Section 1(a)(28).

[4] The ISE Exchanges submitted related proposed rule changes that, among other things, would permit each ISE Exchange to use NES to route options orders outbound to away markets. *See* Securities Exchange Act Release Nos. 79665 (December 22, 2016), 81 FR 96092 (December 29, 2016) (SR–ISE–2016–27); 79664 (December 22, 2016), 81 FR 96136 (December 29, 2016) (SR–ISEGemini–2016–16); and 79663 (December 22, 2016), 81 FR 96089 (December 29, 2016) (SR–ISEMercury–2016–22). The Commission is also today approving these proposed rules changes. *See* Securities Exchange Act Release Nos. 79994 (February 9, 2017); and 79995 (February 9, 2017) (''ISE Exchange Routing Orders'').

[5] *See* Securities Exchange Act Release Nos. 79661 (December 22, 2016), 81 FR 96100 (SR–BX–2016–068) (''BX Notice''); 79662 (December 22, 2016), 81 FR 96087 (SR–NASDAQ–2016–169) (''Nasdaq Notice''); and 79660 (December 22, 2016), 81 FR 96060 (SR–Phlx–2016–120) (''Phlx Notice'').

[6] 15 U.S.C. 78s(b). Phlx Rule 985 also prohibits a Phlx member from being or becoming an affiliate of Phlx, or an affiliate of an entity affiliated with Phlx, in the absence of an effective filing under Section 19(b) of the Act. *See* Phlx Rule 958(b)(i)(B).

[7] Pursuant to Nasdaq Rule 2160(a): ''(1) Nasdaq or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, a Nasdaq member or an affiliate of a Nasdaq member in the absence of an effective filing under Section 19(b) of the Act; and (2) a Nasdaq member shall not be or become an affiliate of Nasdaq, or an affiliate of an entity affiliated with Nasdaq, in the absence of an effective filing under Section 19(b) of the Act.''

Pursuant to BX Rule 2140(a): ''(1) [BX] or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, [a BX] member or an affiliate of [a BX] member in the absence of an effective filing under Section 19(b) of the Act; and (2) [a BX] member shall not be or become an affiliate of [BX], or an affiliate of an entity affiliated with [BX], in the absence of an effective filing under Section 19(b) of the Act.''

[8] *See* Nasdaq Notice, *supra* note 5, at 96087.

[9] *See* BX Notice, *supra* note 5, at 96100.

[10] *See* Phlx Notice, *supra* note 5, at 96061.

[11] *See* Phlx Rule 1080(m)(iii); Nasdaq Options Rules, Chapter VI, Section 11(e); and BX Options Rules, Chapter VI, Section 11(e). *See also* Phlx Notice, *supra* note 5, at 96061; Nasdaq Notice, *supra* note 5, at 96087; and BX Notice, *supra* note 5, at 96100.

[12] *See* Securities Exchange Act Release No. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028) (order approving a proposed rule change to make permanent a pilot program to permit NASDAQ to accept inbound orders routed by NES from the BX Equities market and PSX) at 19352 n.6 and accompanying text.

[13] *See* Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11; SR–ISE Gemini–2016–05; SR–ISE Mercury–2016–10) (order approving a proposed rule change relating to Nasdaq, Inc.'s acquisition of ISE, ISE Gemini, and ISE Mercury).

[14] *See, e.g., supra* note 11; and Securities Exchange Act Release Nos. 69233, *supra* note 12; 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013) (order approving a proposed rule change to make permanent a pilot program to permit BX to accept inbound orders routed by NES from PSX); 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15) (order approving a proposed rule change to make permanent a pilot program to permit PSX to accept inbound orders routed by NES from BX); 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR–Phlx–2014–05) (notice of filing and immediate effectiveness of proposed rule change to permit Phlx to receive inbound orders in options routed through NES from NOM and BX); 71420 (January 28, 2014), 79 FR 6256 (February 3, 2014)(SR–BX–2014–004) (notice of filing and immediate effectiveness of proposed rule change to permit BX to receive inbound orders in options routed through NES from NOM and Phlx); and 71418 (January 28, 2014), 79 FR 6262 (February 3, 2014) (SR–NASDAQ–2014–008) (notice of filing and immediate effectiveness of proposed rule change to permit NOM to receive inbound orders in options routed through NES from BX and Phlx).

[15] *See* Securities Exchange Act Release Nos. 71416, *supra* note 14; 71420, *supra* note 14; and 71418, *supra* note 14. With respect to Nasdaq, routing of options orders is permitted into NOM from BX and Phlx, into Phlx from NOM and BX, and into BX from NOM and Phlx. *See id.*

[16] *See* Phlx Notice, *supra* note 5, at 96062; Nasdaq Notice, *supra* note 5, at 96088; and BX Notice, *supra* note 5, at 96101. In the case of Nasdaq, Nasdaq proposes to permit NES to route options orders into NOM. *See* Nasdaq Notice, *supra* note 5, at 96087.

are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,[18] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange. Further, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[19] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

For each of the ISE Exchanges, NES will operate as a facility that provides outbound options routing from the respective ISE Exchange to other market centers, subject to certain conditions.[20] The operation of NES as a facility of each of the ISE Exchanges providing outbound routing services will be subject to oversight by each of the ISE Exchanges, respectively, as well as Commission oversight. Each of the ISE Exchanges will be responsible for ensuring that NES's outbound options routing services are operated consistent with Section 6 of the Act and ISE, ISE Gemini, and ISE Mercury's rules, respectively. In addition, the ISE Exchanges must each file with the Commission rule changes and fees relating to their outbound options routing services provided by NES.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, each NASDAQ Exchange previously implemented limitations and conditions on its affiliation with NES to permit the Exchange to accept inbound options orders that NES routes in its capacity as a facility of the other NASDAQ Exchanges.[21] Again recognizing the concern previously expressed by the Commission, each NASDAQ Exchange now proposes that it be permitted [22] to accept inbound options orders that NES routes in its capacity as a facility of ISE, ISE Gemini, and ISE Mercury, subject to those same limitations and conditions, as follows: [23]

- First, each NASDAQ Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Services Agreement (''RSA''), as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[24] Pursuant to the RSA and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Nasdaq, BX, and Phlx rules, respectively.[25] Pursuant to the RSA, however, each Exchange retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA will monitor NES for compliance with each of the Exchange's trading rules, and will collect and maintain certain related information.[26]
- Third, FINRA will provide a report to each Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission, or the respective Exchange's, rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission, or the respective Exchange's, rules.
- Fourth, Nasdaq, BX, and Phlx each have in place a rule that requires Nasdaq, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound routing to the Exchange.[27]

Each of the NASDAQ Exchanges has stated that it has met all of the above-listed conditions in connection with NES routing in its capacity as a facility of the other NASDAQ Exchanges, and will comply with these conditions in connection with NES routing in its capacity as a facility of the ISE Exchanges. By meeting such conditions, each NASDAQ Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, and has demonstrated that NES cannot use any information advantage it may have because of its affiliation with each NASDAQ Exchange.[28]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[29] Although the Commission

[17] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(1).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* ISE Exchange Routing Orders, *supra* note 4.

[21] *See supra* note 15 and accompanying text.

[22] In the case of Nasdaq, the Exchange requests that NOM be permitted to accept inbound options orders that NES routes in its capacity as a facility of the ISE Exchanges. *See* Nasdaq Notice, *supra* note 5, at 96087.

[23] *See* Phlx Notice, *supra* note 5, at 96061; Nasdaq Notice, *supra* note 5, at 96087–88; BX Notice, *supra* note 5, at 96101.

[24] 17 CFR 240.17d–2.

[25] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[26] Pursuant to the RSA, both FINRA and the respective Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of each of the ISE Exchanges routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The respective Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Nasdaq Notice, *supra* note 5, at 96088 n.12; BX Notice, *supra* note 5, at 96101 n.12; and Phlx Notice, *supra* note 5, at 96061 n.12. Each of the NASDAQ Exchanges state that the RSA functions in this manner in connection with NES routing in its capacity as a facility of the other NASDAQ Exchanges, and each now seeks to permit an inbound routing relationship with the ISE Exchanges pursuant to the same conditions. *See* Phlx Notice, *supra* note 5, at 96061–62 & n.12; Nasdaq Notice, *supra* note 5, at 96088 & n.12; and BX Notice, *supra* note 5, at 96101 & n.12.

[27] *See* Nasdaq Rule 2160(c); Phlx Rule 985(c)(2); BX Rule 2140(c). The NASDAQ Exchange rules each state that ''NASDAQ OMX Group, Inc.'' shall establish and maintain these procedures and controls. Nasdaq, Inc. was formerly known as NASDAQ OMX Group, Inc. *See* Securities Exchange Act Release No. 75421 (July 10, 2015), 80 FR 42136 (July 16, 2015) (SR–BSECC–2015–001; SR–BX–2015–030; SR–NASDAQ–2015–058; SR–Phlx–2015–46; SR–SCCP–2015–01).

[28] *See* Nasdaq Notice, *supra* note 5, at 96088; Phlx Notice, *supra* note 5, at 96061–62; BX Notice, *supra* note 5, at 96101.

[29] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving

Continued

continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of each of the ISE Exchanges, to route options orders inbound to each of the NASDAQ Exchanges, subject to the limitations and conditions described above.[30]

The Commission believes that these limitations and conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of NES,[31] combined with a non-affiliated SRO's monitoring of NES's compliance with each of the NASDAQ Exchange's rules and quarterly reporting to each NASDAQ Exchange, will help to protect the independence of Nasdaq's, BX's, and Phlx's regulatory responsibilities with respect to NES. The Commission also believes that the Exchanges' rules are designed to ensure that NES cannot use any information advantage it may have because of its affiliation with Nasdaq, BX, or Phlx, respectively.[32]

Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[30] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving rules relating to the establishment of the BX options market) at 39281–39282; 69233, *supra* note 12; 69232, *supra* note 14; 69229, *supra* note 14; and the ISE Exchange Routing Orders, *supra* note 4.

[31] This oversight will be accomplished through the 17d–2 Agreement and the RSA.

[32] *See supra* note 27 and accompanying text.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule changes (SR–BX–2016–068; SR–NASDAQ–2016–169; SR–Phlx–2016–120), each as modified by their respective Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02993 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80003; File No. SR–CBOE–2017–011]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Marketing Fee program, effective February 1, 2017. By way of background the Marketing Fee is assessed on certain transactions of Market-Makers resulting from (i) customer orders from payment accepting firms, or (ii) customer orders that have designated a ''Preferred Market-Maker'' (''PMM'') under CBOE Rule 8.13. The funds collected via this Marketing Fee are then put into pools controlled by DPMs and PMMs. The DPM or PMM controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange. On each order, an order flow provider can designate the Preferred Market-Maker to which the funds generated from the order sent by the order flow provider should be allocated (a ''Preferred order'').

The Exchange proposes to expand the Marketing Fee program to Lead Market-Makers (''LMMs''). Under the proposed rule change, LMMs would be given access to the Marketing Fee funds generated from those orders on which the LMM was preferred (*i.e.,* designated) and those funds would be collected by CBOE and disbursed by CBOE according to the instructions of the LMM. The Exchange notes that expanding the Marketing Fee program to LMMs allows LMMs to amass a pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. The Exchange also notes that as with DPMs and PMMs, an LMM may have access to the Marketing Fee funds generated from a Preferred order regardless of whether that LMM has an appointment in the class in which the

Preferred order is received and executed.

The Exchange also proposes to make certain clarifications to Footnote 6 of the Fees Schedule, which governs the Marketing Fee program. The Exchange notes that it inadvertently only references Market-Makers and DPMs as being subject to the fee, even though LMMs, like DPMs, are also Market-Makers and the fee has therefore always applied (*i.e.,* all orders with origin code ''M'' are subject to the fee in accordance with above). As such, the Exchange proposes to explicitly note in the first line that the Marketing Fee is assessed to transactions of ''Market-Makers (including DPMs and LMMs)'' and thereafter refer only to ''Market-Makers'' in the Footnote, instead of ''Market-Makers and DPMs'' since Market-Makers is defined as including DPMs and LMMs. The Exchange notes this is not a substantive change, but rather a change to make this point clear in the Fees Schedule to avoid potential confusion. The Exchange next proposes to include a reference to ''DPMs under CBOE Rule 8.80'' in the first sentence to explicitly note that customer orders may also have a designated DPM (*i.e.,* the DPM may be given access to Marketing Fee funds generated from a Preferred order on which it was designated). In order to avoid potential confusion, the Exchange also proposes to add a new term, ''Preferenced Market-Makers.'' Preferenced Market-Makers will refer collectively to any DPM, PMM or LMM that is designated on a Preferred order (which the Exchange also proposes to rename as a ''Preferenced order'' for consistency).[3] The Exchange believes using the general term ''Preferred Market-Maker'' for designated DPMs, PMMs or LMMs can be confused with PMMs under CBOE Rule 8.13. The Exchange believes the proposed change therefore, provides clarity in the rules and makes the Fees Schedule easier to read.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes expanding the Marketing Fee program to LMMs is reasonable, equitable and not unfairly discriminatory because it will allow LMMs to amass a pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Additionally, the Exchange believes it is equitable and not unfairly discriminatory to expand the Marketing Fee program to LMMs because, like PMMs under CBOE Rule 8.13, LMMs have increased obligations that other market participants do not such an heightened quoting standards.[7]

The Exchange also believes that clarifying that the reference to ''Market-Makers'' in Footnote 6 actually includes both DPMs and LMMs maintains clarity in the Fees Schedule and avoids potential confusion. Similarly, the Exchange believes that clarifying that customer orders may also designate a DPM (who would then have access to the Marketing Fees generated from that Preferred order) alleviates potential confusion. Lastly, the Exchange believes introducing the term ''Preferenced Market-Maker'' to denote any DPM, PMM or LMM that is designated on a Preferred (or as proposed, ''Preferenced'') order alleviates potential confusion and makes the Fees Schedule easier to read. The alleviation of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, to protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while the proposed change allows LMMs to also amass a pool of funds with which to use to incent order flow providers to send order flow to the Exchange, LMMs, like PMMs, have heightened quoting standards. Moreover, the proposed change provides LMMs an opportunity to incent order flow providers to send order flow to the Exchange, which benefits all market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only affects trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

[3] The Commission notes that the Exchange's new text in footnote 6 of the Fees Schedule refers in several places to ''DPM or Preferenced Market-Maker.'' Though the term ''Preferenced Market-Maker'' includes DPMs (as well as LMMs and PMMs), use of the phrase ''DPM or Preferenced Market-Maker'' recognizes that DPMs also may be given access to marketing fee funds collected on orders preferenced to them in any class in addition to funds collected from non-preferenced orders in the DPM's assigned classes.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* CBOE Rule 8.15 (Lead Market-Makers).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2017–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2017–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–011 and should be submitted on or before March 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02997 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79999; File No. SR–ICEEU–2017–002]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change To Revise the ICE Clear Europe Clearing Rules Relating to the Application of Default Provisions in the Event of a Resolution Proceeding

February 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 25, 2017, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been primarily prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to modify the ICE Clear Europe Clearing Rules (''Clearing Rules'') to clarify the application of certain default provisions in the event of a resolution proceeding with respect to the Clearing House or a Clearing Member.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule amendments is to modify the ICE Clear Europe Clearing Rules to clarify the application of certain default-related provisions in the context of resolution proceedings with respect to the Clearing House or a Clearing Member. Such proceedings can arise under so-called special resolution regimes that may apply under applicable law to the Clearing House or a Clearing Member in the event of either's failure or insolvency, as an alternative to traditional bankruptcy or insolvency proceedings in the relevant jurisdiction. Such regimes include the UK Banking Act 2009 and the EU Bank Recovery and Resolution Directive (the ''BRRD'').[3]

In Rule 101, ICE Clear Europe proposes amendments to the definition of ''Insolvency'' and addition of new defined terms ''Resolution Step'' and ''Unprotected Resolution Step.'' These amendments are designed to distinguish between insolvency and resolution proceedings, and reflect and incorporate certain limitations on the termination of Contracts and exercise of default remedies that apply under the terms of an applicable special resolution regime. (Under the current Rules, an Insolvency in turn constitutes an Event of Default that permits the exercise of the default rights and remedies specified in the Rules.)

The definition of Insolvency has been amended to exclude certain resolution proceedings. Specifically, the amendment removes the existing provision that a Governmental Authority exercising one or more of its stabilization powers under the UK Banking Act 2009 will constitute an Insolvency. In addition, the appointment of an Insolvency Practitioner, which normally is an Insolvency, will not constitute an Insolvency if it is made in connection with a Resolution Step that is not an Unprotected Resolution Step, as defined below. A Resolution Step involving a Governmental Authority making an order to transfer a person's securities, property, rights or liabilities (which may be a feature of a resolution proceeding) will also not constitute an Insolvency.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

A new definition of ''Resolution Step'' has been added, which can apply to persons other than the Clearing House. A Resolution Step means a Government Authority exercising stabilization powers under the UK Banking Act 2009 or certain resolution authorities under national legislation implementing the BRRD. A resolution proceeding of this type involving the Clearing House itself will not constitute a Resolution Step. The amendments do not address other types of resolution proceedings (including resolution proceedings under laws other than the UK Banking Act 2009 or national laws implementing the BRRD).

A new definition of ''Unprotected Resolution Step'' has been added, which means a Resolution Step with respect to a person (other than the Clearing House) in which either (i) the substantive obligations of the person to the Clearing House under the Rules are not being performed or (ii) the Clearing House is not prohibited or otherwise prevented from declaring an event of default or exercising termination and close out rights under the Rules with respect to that person.

In Section 901(a)(vii), the definition of Event of Default has been modified to include an Unprotected Resolution Step with respect to a Clearing Member or any of its Group Companies.

As a result of these changes, a resolution proceeding under the UK Banking Act or national laws implementing the BRRD, with respect to either the Clearing House itself or a Clearing Member, will not constitute an Insolvency. Such a resolution proceeding that involves a Clearing Member will constitute a Resolution Step, but a Resolution Step will not itself constitute an Event of Default under the Rules, unless it is an Unprotected Resolution Step. In light of the definition of Unprotected Resolution Step, this approach thus takes into account limitations imposed by the relevant resolution regime on the declaration of a default and exercise of default remedies in the context of a resolution proceeding.

A variety of conforming and other clarifying changes have been made throughout the Rules. In the definition of ''Insolvency Practitioner'' in Rule 101, a reference to a temporary administrator has been added. The definition of ''Applicable Law'' has been revised to use the defined term ''Insolvency.'' Rule 201(a)(xxi) has been revised to provide that in order to become or remain a Clearing Member, a person must not be subject to an Unprotected Resolution Step (in addition to the existing provision that a person must not be subject to an Insolvency). In Rule 202(b), reference to various types of insolvency laws have been replaced using the term Insolvency and Applicable Laws. Rule 201(a)(xxxv) has been revised to refer to applicable laws involving Resolution Steps as well as Insolvency. Similarly, Rule 204(a)(viii) requires a Clearing Member to notify the Clearing House of any Resolution Step involving it or its Group Companies. In Rule 405(a)(ii) and (f), references to various types of insolvency proceedings have been replaced with the defined term Insolvency.

Rule 903(d)(i), which addresses certain automatic termination events, has been revised to include a reference to an Unprotected Resolution Step, in addition to the current reference to Insolvency. In Rule 904(m), which requires the Clearing House to commit to trigger the procedures for transfer of customer positions following a Clearing Member default, a requirement has been added that the relevant customer is not subject to an Unprotected Resolution Step (in parallel to the existing requirement that the customer not be subject to an Insolvency). Similar changes are made in Rule 904(p) with respect to Sponsored Principals and Rule 904(u) with respect to Customers using Individually Segregated Margin-flow Co-mingled Accounts.

In Rule 1901(b)(x), a requirement that Sponsored Principals not be subject to an Unprotected Resolution Step has been added (similar to the requirement discussed above for Clearing Members in revised Rule 201(a)). Rule 1901(b)(xiv) has also been revised to refer to the defined term Insolvency. In addition, in each of the forms of Standard Terms Annex, paragraph 10 has been revised to use the defined term Insolvency in place of certain references to various types of insolvency proceedings.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act [4] and the regulations thereunder applicable to it, and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[5] The changes to the Rules are intended to clarify the applicability of certain default rights and remedies in the context of a resolution proceeding with respect to the Clearing House or a Clearing Member, in light of limitations that may exist under the UK Banking Act 2009 and BRRD (and relevant national implementing legislation) on the exercise of such rights and remedies. As such, ICE Clear Europe believes that the changes will promote the prompt and accurate clearance and settlement of securities and derivatives transactions, and further the public interest in the safe and effective clearing of such transactions. ICE Clear Europe also does not believe the amendments will adversely affect the safeguarding of securities and funds in its custody or control or for which it is responsible. In addition, the amendments are not intended to increase risk to ICE Clear Europe, and will not impact ICE Clear Europe's ability to take risk management measures under its Rules with respect to non-defaulting Clearing Members (including Clearing Members that may be subject to a Resolution Step that is not an Unprotected Resolution Step). The changes are thus consistent with the requirements of Section 17A of the Act.[6]

B. Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting amendments to the Clearing Rules intended to conform the Rules to the requirements of certain special resolution regimes. ICE Clear Europe does not believe that these changes will impose any significant additional costs on Clearing Members or other market participants, and further believes that any incremental costs that result reflect the limitations imposed on the exercise of remedies as a matter of law under certain special resolution regimes. ICE Clear Europe does not believe the amendments will adversely affect access to clearing by Clearing Members or their customers or otherwise adversely affect Clearing Members or market participants. In this regard, the changes will apply to all Clearing Members that may be subject to the covered types of resolution proceedings, and accordingly are not expected to affect competition among Clearing Members or in the market for clearing services generally.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe published a prior version of the proposed amendments for consultation with its Clearing Members. In response to that consultation, two Clearing Members inquired about the regulatory process surrounding the proposed changes. In addition, one Clearing Member suggested that certain additional clarifications be made to limit the application of other aspects of the Insolvency definition. In the context of the current version of the proposed amendments, which has been revised from the original consultation, ICE Clear Europe does not believe that such additional clarifications are necessary or appropriate, and has determined not to make any such clarifications. ICE Clear Europe will notify the Commission of any written comments with respect to the proposed rule change received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2017–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2017–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2017–002 and should be submitted on or before March 2, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02995 Filed 2–14–17; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9890]

Notice of Determinations; Culturally Significant Object Imported for Exhibition Determinations: ''An American Icon Returns: ''Whistler's Mother'' in Chicago'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the object to be included in the exhibition ''An American Icon Returns: ''Whistler's Mother'' in Chicago,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Art Institute of Chicago, Chicago, Illinois, from on or about March 4, 2017, until on or about May 21, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an object list, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–03050 Filed 2–14–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9885]

60-Day Notice of Proposed Information Collection: Affidavit of Relationship (AOR) for Minors Who Are Nationals of El Salvador, Guatemala, or Honduras

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *April 17, 2017.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2017–0006'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: GrecoMC@state.gov.*
- *Regular Mail:* Send written comments to: Monica Greco, PRM/Office of Admissions, 2025 E Street NW., Washington DC, 20522.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Monica Greco, PRM/Office of Admissions, 2025 E Street NW., Washington DC, 20522, who may be reached on 202–453–9251 or at *GrecoMC@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Affidavit of Relationship (AOR) for Minors Who Are Nationals of El Salvador, Guatemala, and Honduras.
- *OMB Control Number:* 1405–0217.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* PRM/A.
- *Form Number:* DS–7699.
- *Respondents:* Lawfully present parents in the U.S. with children in El Salvador, Guatemala, and Honduras.
- *Estimated Number of Respondents:* 5,000.
- *Estimated Number of Responses:* 5,000.
- *Average Time per Response:* 120 minutes per response.
- *Total Estimated Burden Time:* 10,000 hours.
- *Frequency* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Department of State Bureau of Population, Refugees, and Migration (PRM) is responsible for coordinating and managing the U.S. Refugee Admissions Program (USRAP). PRM coordinates within the Department of State, as well as with the Department of Homeland Security's U.S. Citizenship and Immigration Services (DHS/USCIS), in carrying out this responsibility. A critical part of the State Department's responsibility is determining which individuals, from among millions of refugees worldwide, will have access to U.S. resettlement consideration. PRM and DHS/USCIS are expanding an in-country program to provide a means for certain persons who are lawfully present in the United States to claim a relationship with child(ren) in Honduras, El Salvador, and Guatemala and to assist the U.S. Department of State in determining whether those child(ren) and certain derivative beneficiaries are qualified to apply for access to the USRAP for family reunification purposes. This form also assists DHS/USCIS to verify parent-child relationships during refugee case adjudication. The main purpose of the DS–7699 is for the U.S.-based parent to provide biographical information about his/her child(ren) in the qualifying countries who may subsequently seek access to the USRAP for verification by the U.S. government.

Methodology: This information collection currently involves use of electronic techniques. Parents (respondents) in the United States will work closely with a resettlement agency during the completion of the AOR to ensure that the information is accurate. Parents may visit any resettlement agency located in a U.S. community to complete an AOR. Sometimes respondents do not have strong English-language skills and benefit from having a face-to-face meeting with resettlement agency staff. The DS–7699 form will be completed electronically. Completed AORs will be printed out for ink signature by the respondents. The electronic copy will then be submitted electronically to the Refugee Processing Center (RPC) and downloaded into the Worldwide Refugee Admissions Processing System (WRAPS). The signed paper copy will remain with PRM's Reception and Placement Agency partners.

Dated: February 9, 2017.

Mark Storella,

Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2017–03077 Filed 2–14–17; 8:45 am]

BILLING CODE 4710–33–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

Meeting No. 17–01

The TVA Board of Directors will hold a public meeting on February 16, 2017, at the Gatlinburg Convention Center, 234 Historic Nature Trail, Gatlinburg, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Chair's Welcome

Old Business

Approval of minutes of the November 10, 2016, Board Meeting

New Business

1. Report from President and CEO
2. Report of the Nominating Committee
3. Governance Items
   A. Committee Membership
   B. Assistant Corporate Secretaries
4. Report of the Audit, Risk, and Regulation Committee
5. Report of the Finance, Rates, and Portfolio Committee
6. Report of the Nuclear Oversight Committee
7. Report of the External Relations Committee
   A. Regional Energy Resource Council Charter
8. Report of the People and Performance Committee
9. Information Items

A. Compensation Adjustments for the Chief Executive Officer

B. Selection of TVA Board Chair

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 9, 2017.

Sherry A. Quirk,

General Counsel.

[FR Doc. 2017–03120 Filed 2–13–17; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 29, 2017.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, March 29, 2017, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave., Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: February 8, 2017.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–02981 Filed 2–14–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8857 and 8857(SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8857 and 8857(SP), Request for Innocent Spouse Relief.

DATES: Written comments should be received on or before April 17, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Innocent Spouse Relief.

OMB Number: 1545–1596.

Form Numbers: 8857 and 8857(SP).

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, ''innocent spouse'' relief when: The taxpayer files a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Forms 8857 and 8857(SP) is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly erroneous item attributable to the spouse.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 4 hours, 49 minutes.

Estimated Total Annual Burden Hours: 240,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 6, 2017.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2017–02984 Filed 2–14–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before April 17, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or at *Elaine.H.Christophe@irs.gov.*

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

1. *Title:* Constructive Transfers and Transfers of Property to a Third-Party on Behalf of a Spouse (§ 1.1041–2).

OMB Number: 1545–1751.

Regulation: TD 9035.

Abstract: Constructive transfers and transfers of property to a third-party on behalf of a spouse. The regulation sets forth the required information that will permit spouses or former spouses to treat a redemption by a corporation of stock of one spouse or former spouse as a transfer of that stock to the other spouse or former spouse in exchange for the redemption proceeds and a redemption of the stock from the latter spouse or a former spouse in exchange for the redemption proceeds.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, and businesses and other for-profit organizations.

Estimated Number of Respondents: 1000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

2. *Title:* Rotable Spare Parts Safe Harbor Method.

OMB Number: 1545–2070.

Revenue Procedure Number: Rev. Proc. 2007–48.

Abstract: The information for which the agency is requesting to collect will support a taxpayer's claim for eligibility to use the safe harbor method of accounting for rotable spare parts provided in the proposed revenue procedures. The information will be submitted as a supporting schedule for the Form 3115, Application for Change in Accounting Method.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 75.

3. *Title:* Valuation Tables.

OMB Number: 1545–1343.

Regulation: TD 9540.

Abstract: This document contains final regulations relating to the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests. These regulations will affect the valuation of *inter vivos* and testamentary transfers of interests dependent on one or more measuring lives. These regulations are necessary because section 7520(c)(3) directs the Secretary to update the actuarial tables to reflect the most recent mortality experience available.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Hours: 4,500.

4. *Title:* Communications Excise Tax; Prepaid Telephone Cards.

OMB Number: 1545–1628.

Regulation: Treasury Decision 8855 (REG–118620–97.)

Abstract: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 104.

Estimated Time per Respondent: 20 min.

Estimated Total Annual Burden Hours: 34.

5. *Title:* Relief From Ruling Process For Making Late Reverse QTIP Election.

OMB Number: 1545–1898.

Regulation: Revenue Procedure 2004–47.

Abstract: Revenue Procedure 2004–47 provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6.

Estimated Annual Average Time per Respondent: 9 hours.

Estimated Total Annual Hours: 54.

6. *Title:* Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act.

OMB Number: 1545–2178.

Regulation: REG–118412–10.

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Patient Protection and Affordable Care Act regarding status as a grandfathered health plan.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,273,274.

Estimated Total Annual Burden: 2,063 Hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: February 3, 2017.

Tuawana Pinkston,

IRS Supervisory Tax Analyst.

[FR Doc. 2017–02985 Filed 2–14–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Wednesday and Thursday, March 29 and 30, 2017. The meeting on both days will be conducted at the Readjustment Counseling Service (RCS) Headquarters Offices, located at 1717 H Street NW., Washington, DC 20006, in Conference Room 430C. The agenda for these two days will begin at 8:00 a.m. and end at 4:30 p.m. The meeting on both days is open to the public.

The purpose of the Committee is to review the post-war readjustment needs of combat-theater Veterans and to evaluate the availability, effectiveness and coordination of VA programs required to meet Veterans' readjustment service needs.

The agenda for March 29 will include briefings from the Chief Readjustment Counseling Officer on the current activities of the Readjustment Counseling Service (RCS) Vet Centers to include the full scope of outreach and readjustment counseling services provided to combat-theater Veterans, Service members and their families. The briefing will also focus on the status of the reorganization of RCS and its Vet Centers system-wide in conjunction with the parallel transformation of the Veterans Health Administration (VHA) Veterans Integrated Service Network (VISN) transformation.

On March 30, the Committee members will receive briefings from VHA's mental health leadership on the mental health service needs of combat-theater Veterans and on the coordination of Vet Center services with VHA mental health services to better service the combat-theater Veteran population.

The agenda for both days will also include time for Committee strategic planning primarily focused on its annual operations plans for 2017/18, its 2017 field meeting agenda, and the target perspectives for its 19th annual report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee before the meeting to Mr. Charles M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Because the meeting will be in a Government building, please provide valid photo identification for check-in. Please allow 15 minutes before the meeting for the check-in process. If you plan to attend or have questions concerning the meeting, please contact Mr. Flora at (202) 461–6525 or by email at *charles.flora@va.gov*.

Dated: February 9, 2017.

LaTonya L. Small,

Advisory Committee Management Office.

[FR Doc. 2017–02982 Filed 2–14–17; 8:45 am]

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